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ON  
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EVIDENCE HEARD ON

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ROYAL COMMISSION ON TRANSPORTATION

Wednesday, March 29/50

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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO  
WEDNESDAY  
MARCH 29, 1950.

THE HONOURABLE W.F.A. TURGEON, K.C., LL.D., - CHAIRMAN  
HAROLD ADAMS INNIS - COMMISSIONER  
HENRY FORBES ANGUS - COMMISSIONER

-----  
G.R. Hunter  
Secretary

P.L. Belcourt  
Asst. Secretary

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COUNSEL APPEARING:-

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N.J. MacMillan	
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F.C.S. Evans, K.C.	} Canadian Pacific Railway
K.D.M. Spence	
I.D. Sinclair	
C.D. Shepard	) Province of Manitoba
M.A. MacPherson, K.C.	) Province of Saskatchewan
J.J. Frawley, K.C.	) Province of Alberta
F.D. Smith, K.C.	} Province of Nova Scotia; Transportation Commission of the Maritime Board of Trade.

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Ottawa, Ontario,  
Wednesday, March 29, 1950.

MORNING SESSION

MR SINCLAIR: Yesterday, my lord, at page 19361 of the transcript the question about that statement in the provincial brief was under consideration; that is, the statement that was made at page 27 of their brief dealing with certain water and truck competitive rates, which they said, for example, are well below their 1897 level. I stated to the Commission, and you suggested, that it might be well for us to co-operate with the provinces in attempting to get to the bottom of that statement, because I had the instructions that there were no such rates. We have now investigated this matter as thoroughly as we can. We have gone to the board and we found the earliest Transcontinental tariff that they had; that is Transcontinental Bureau Westbound Tariff No. 5-C, I.C.C. No.396, C.R.C. No. 5, issued by R. H. Countiss of San Francisco, who is the agent, and it was effective February 15, 1904. There are no rates in there that are higher than the present transcontinental rates. Mr. Harries, in being asked what he had in mind, referred to the movement of canned goods. That tariff shows that the rate on canned goods from Montreal and Toronto and other points to north Pacific coast terminals - that is, including Vancouver and Victoria -- was \$1.05 per hundred, minimum 40,000 pounds.

MR O'DONNELL: That is 1905?

MR SINCLAIR: That is 1904. Today that rate is \$1.40.

THE CHAIRMAN: What is the former rate? Will you just repeat that, Mr. Sinclair?

MR SINCLAIR: \$1.05. I would also refer the Commission to Exhibit 143 that was put in when Mr. Jefferson was giving evidence and that was a statement of rates on selected commodities from Montreal and Toronto





to Vancouver in effect April 1, 1910; August 6, 1913; and November 1, 1949; and that will show that, for instance, on barbed wire, the rate was 80 cents, 40,000 pound minimum.

THE CHAIRMAN: When?

MR. SINCLAIR: This is 1910; 80 cents, 40,000 pound minimum. Today's rate - that is, November 1, 1949, according to this - is for 80,000 pound minimum, \$1.32; 30,000 pound minimum, \$2.18; 30,000 pound minimum, \$2.74. Take builders' hardware not otherwise specified. There is no transcontinental rate on that today. On axes, the commodity rate in 1910 was \$1. Today for 30,000 pound minimum or for 36,000 pound minimum it is \$2.74. The same is true up through the list, dye stuffs, toilet paper, wrapping paper, etcetera. We can find no instances, and our traffic officers have again instructed that there are no instances, to support the statement made by the brief, that they know of or that they have been able to find.

MR. O'DONNELL: To support Mr. Harries' statement.

MR. SINCLAIR: Yes, that is, to support Mr. Harries' statement made on page 27.

MR. FRAWLEY: I am not prepared to give a complete statement now, but I want the right to do so in answer to what Mr. Sinclair has said. The matter is being looked into by my people. In reply to my friend I would say now that what I said was that the rates, whatever they were called -- commodity rates or transcontinental rates, competitive rates or class rates -- which

moved a car of canned goods from to Toronto to Vancouver in 1897 and in 1904 were higher than the \$1.40 rate which is now charged today. That is all I said. The matter is being run down. I find that my friend Mr. Sinclair has found that the transport board



have no rates on file prior to 1904. I put it to the director of traffic that I would have thought that he would have had filed with the board the old rates that were probably filed with the Railway Committee of the Privy Council. He said, "No, that does not seem to be the fact." I said, "Where would one go to find out what the rate was in 1897?" He said, "To the railways" and to no one else. In any event, I want the opportunity to make a complete statement to support the statement I made in my brief, I simply say now that my friend has nothing to answer me by what he said today. He tells us that the earliest transcontinental tariff was published effective February 15, 1904. It therefore follows, my lord, that before that they must have moved on class rates and certainly they were higher than \$1.05. At the moment all I will say is that we will go into the whole matter and I will file a rather complete statement, perhaps tomorrow. I hope it may all be done tomorrow.

MR. SHEPARD: Since this is a joint brief of the three prairie provinces, it might be just as well if I said a word as far as what Manitoba considered this statement to mean. The statement under discussion is that certain water and truck competitive rates, for example, are well below their 1897 level. As far as we are concerned that sentence could be re-written in this way: "Certain commodities today moving at water and truck competitive rates, for example, are moving at rates well below the rates on those commodities in 1897."

MR. FRAWLEY: That is what it meant. I really took, from something your lordship said yesterday, that your lordship read it that way. If my friend's whole statement is premised on the fact that we are saying that there was a transcontinental competitive commodity rate in 1897, I am sorry and we have to offer him our apologies. That





is not the way it is to be read, and that is not the way it was intended to be read, Mr. Sinclair. If that is the way you read it and your statement this morning is based on that reading, of course we are not ad idem at all.

MR. SINCLAIR: I was not going to make any contract with Mr. Frawley. All I say is that he makes a statement in the brief and does not come forward with any examples. Yet he has had months and months and months in which to do so.

MR. SHEPARD: Years.

MR. SINCLAIR: Maybe he has, Mr. Shepard.

THE CHAIRMAN: Where is the statement?

MR. SINCLAIR: At page 27.

THE CHAIRMAN: That is, the joint brief of the three provinces?

MR. SINCLAIR: Yes, as first written.

THE CHAIRMAN: Yes. Let me get it.

MR. SINCLAIR: The second paragraph as first written went in this way:

" It has been suggested that a rate established in 1897 --

That is, as first written, passed and settled by the three prairie provinces. It read;

" It has been suggested that a rate established in 1897 is prima facie an unreasonable one under today's conditions, and an attempt has been made to leave the impression that the grain rates are unique in this regard."

Some of those words were struck<sup>out</sup>/and then they went on:

"Nothing could be further from the truth." Then they struck that out, and went on:

"There are rates today --

And this was left in.

"--which move traffic at a charge below the





"level which pertained in 1897."

Presumably that meant that there are rates today which move traffic at a charge below the level which moved traffic in 1897.

THE CHAIRMAN: Does that not mean certain specific rates? It says "There are rates..."

MR. SINCLAIR: Yes.

THE CHAIRMAN: On some commodity or other?

MR. SINCLAIR: Yes.

THE CHAIRMAN: Some class of goods?

MR. SINCLAIR: Yes. And then they go on:

"Certain water and truck competitive rates, for example, are well below their 1897 level. The grain rates are far from unique."

That is quite a statement to make, and then come forward and not give us any examples.

MR. FRAWLEY: We did give examples.

THE CHAIRMAN: What about your examples?

MR. SINCLAIR: The mountain differential.

MR FRAWLEY: Yes; and canned goods.

(Page 19500 follows)



MR. SINCLAIR: I have just dealt with canned goods. The mountain differential, my lord, I don't want to argue this, but surely <sup>if</sup> for particular reasons on account of costs of operation, the railways are entitled to charge double the Prairie scale on movements in Pacific territory, and the Board on investigation will find that that no longer is justified, surely that is not what this statement meant.

MR. FRAWLEY: Of course it is what it meant.

MR. SINCLAIR: Why doesn't it say so?

MR. FRAWLEY: We said so in the box, and canned goods, surely we have not got to go over that again. My friend is bringing out this morning that the canned goods moved in 1897 at class rates, and I ask my friend right now: Will he show that the class rate which governed canned goods from Toronto to Vancouver in 1897 was not more than \$1.40, that is all .

MR. SINCLAIR: I am asking Mr. Frawley to give me the tariff authorities for the statement he has made. We have not been able to find any.

MR. FRAWLEY: They are your own rates. The Chief Director of traffic told me this morning that we would have to ask the railways, my lord. What can I do when the Chief Director of Traffic of the Board says: "You will have to get that rate from the railways. I have nothing prior to 1904."

THE CHAIRMAN: About these canned goods?

MR. SINCLAIR: Why didn't you ask for information before you made the statement?

MR. FRAWLEY: Because we were quite satisfied we were right.





THE CHAIRMAN: Tell me (perhaps you have answered this already this morning) what about this canned goods rate?

MR. SINCLAIR: I say that the earliest trans-continental tariff that we have been able to find (we don't say that was the first one, but it is the first one we have been able to find) shows that the rates were well below the rate in existence today, just contrary to the statements made by the Provinces.

THE CHAIRMAN: Are you talking of canned goods now?

MR. SINCLAIR: Yes.

THE CHAIRMAN: In 1897?

MR. SINCLAIR: Yes.

MR. FRAWLEY: But you say you cannot find anything before 1904.

MR. SINCLAIR: I say that is the first one we have been able to find.

MR. FRAWLEY: What was there before, because you are talking of 1897.

MR. SINCLAIR: I say to my friend: Bring forth the tariffs and I will look at them.

THE CHAIRMAN: How can he? It is your tariff.

MR. SINCLAIR: We have made a check, my lord. Surely I am not to be put on onus of proof by my learned friend's wild and unsupported statements.

MR. FRAWLEY: Let us be sensible about this. The Canadian Pacific Railway comes to the Board and says:-  
find  
"Let Mr. Frawley/what the rate was in 1897". How? Go to the Transport Board, and they say go to the Canadian Pacific Railway.





THE CHAIRMAN: The point remains, Mr. Frawley, that this Brief which was compounded by the three Provinces does say that there are rates today which move traffic below the levels which pertained in 1897.

MR. FRAWLEY: Yes.

THE CHAIRMAN: And in answer to that you say, well, there are the canned goods rates. I don't know where you get that rate. Perhaps you told us.

MR. SINCLAIR: He told you it was out of his head.

MR. FRAWLEY: I told you that the rate is \$1.40. Mr. Jefferson told us in the witness box that he had not been able to find any rates earlier than 1910. Now we have gone back six years and now there is nothing earlier than 1904. I think Mr. Jefferson said, in fairness to him, that if there were any they would have been destroyed. The reference to that that I took down this morning is in volume 63 - I am sorry I have not got the exact reference. In any event we then simply assumed, sir, that if they were not moving at a transcontinental Panama Canal compelled rate, that they must have been moving on a class rate, and that statement, my lord, is now substantiated by Mr. Sinclair himself.

MR. SINCLAIR: I deny that.

THE CHAIRMAN: Pardon me, have you the class rates for 1897?

MR. FRAWLEY: No, they are things that are in the hands of the Canadian Pacific Railway.

THE CHAIRMAN: Where did you get the figures?

MR. FRAWLEY: As a matter of fact our principal source was something that Mr. Henry did before the Sirois



Commission, and from that we had to draw certain inferences, but we could not put our fingers on a class rate which moved the traffic in 1897, at least that is what we are striving to do now.

THE CHAIRMAN: But on these canned goods, you gave a figure.

MR. FRAWLEY: \$1.40. That is today's rate. We know that.

THE CHAIRMAN: And you say that that figure is higher than the figure which prevailed in 1897.

MR. FRAWLEY: And why do we say that?

THE CHAIRMAN: Yes.

MR. FRAWLEY: My lord, we have not been able to put our fingers on a tariff and point out that tariff.

THE CHAIRMAN: I said "higher" I meant "lower".

MR. FRAWLEY: The first transcontinental tariff came into existence, we thought until this morning, about 1910.

MR. SINCLAIR: That is not true, my lord. I don't know why Mr. Frawley can't be accurate. I said that is the earliest one we have been able to find. That does not say it was the first transcontinental tariff. Now, surely he can be accurate.

MR. FRAWLEY: What do we do then? Do we leave it as a matter of speculation?

THE CHAIRMAN: Where do you draw your inference, Mr. Frawley, about these rates of 1897 on canned goods?

MR. FRAWLEY: Well, my lord, if we go back so far and we find there was no transcontinental water competitive rate, then we go, as we are entitled to go, to the class rate.





THE CHAIRMAN: Yes, where do you find the class rate?

MR. FRAWLEY: We found the class rate in a railway tariff.

THE CHAIRMAN: You have the railway tariff?

MR. FRAWLEY: No, we have not, because when we asked the Board for this tariff, they told us that we would have to go to the railways.

THE CHAIRMAN: I know, but how do you know they are higher or lower?

MR. FRAWLEY: We know, my lord, that they are much greater than the special water competitive commodity rate.

THE CHAIRMAN: But in 1897?

MR. FRAWLEY: Yes, in 1897. We say to ourselves, my lord: If there is no transcontinental water compelled competitive rate, if we are right about that, then we say it must be the class rate. We know from our knowledge of the class rates and the scales, that it must have been higher than \$1.40. That is our reasoning, sir.

THE CHAIRMAN: You mean to say that a class rate fifty-three years ago must have been higher than a competitive rate today?

MR. FRAWLEY: Yes, sir, because we know they were higher in 1910, we know they were higher at the time we have knowledge of the first competitive rate. For instance, Mr. Sinclair gave us this morning the special transcontinental competitive water rate. Now, we know that on that day the class rate was higher. You see, that is the sort of reasoning that was applied my lord.



THE CHAIRMAN: You believe the competitive rate must be lower?

MR. FRAWLEY: That is right, and considerably lower, so we feel quite justified in saying that if you have to use a class rate, I will put it this way - -

THE CHAIRMAN: How do you bring it back and say that a competitive rate today necessarily being something lower than the class rate, must be lower than the class rate that existed fifty-three years ago.

MR. FRAWLEY: Well, my lord, we go back to the ones we do know about, we go little by little.

THE CHAIRMAN: Did you say 1910?

MR. FRAWLEY: 1910.

THE CHAIRMAN: Now, is the competitive rate today lower than the class rate of 1910 ?

MR. FRAWLEY: I think I can say, yes, they were. I would like to put my finger on that and show it to you, my lord. I think I can say that, yes, definitely.

MR. SINCLAIR: Could I make a suggestion, my lord, that I think might enable us to go forward with my cross-examination of Mr. Wesson: that Mr. Frawley withdraw this statement from the Brief until he can bring forth something to prove it.

MR. FRAWLEY: Well, I am certainly not withdrawing one word of it. If that is all my friend has to say, I am inclined to say that I won't say anything more about it but rest on what the Commission thinks about it.

THE CHAIRMAN: We have had all that.

MR. FRAWLEY: Well, as I said at the beginning,





I want to bring on another statement as soon as I can, which I hope will be tomorrow, which I hope will throw some light on this.

THE CHAIRMAN: All right, Mr. Sinclair. Mr. Frawley says he is going to bring in a statement tomorrow.

MR. SINCLAIR: Supported, I hope, by tariff references.

MR. FRAWLEY: Don't hope to much. Just wait and see.

MR. SINCLAIR: I would like to have it checked by traffic officers. All I say is we have done the best we can. If Mr. Frawley can find any we would like to have them, and then we will discuss them. I am sorry Mr. Wesson.

MR. JOHN H. WESSON - Recalled

CROSS-EXAMINATION BY MR. SINCLAIR - Resumed:-

Q. When Mr. Harries was in the box - Mr. Harries is one of Mr. Frawley's advisers or consultants, the man who wrote Part II of this Brief including the statement that we were just discussing - he said that the price of wheat at Fort William was \$1.75, and he made some calculations based on that figure. Now, Mr. Wesson, Class 2 wheat is now \$2.20, Fort William, is that right?

A. Yes, yesterday I think it was \$2.23.

Q. The British Wheat Agreement wheat, Fort William, was \$2.00?

A. That is right, sir.

Q. And International Wheat Agreement wheat is \$1.98 maximum and \$1.65 minimum?



A. \$1.65 minimum, \$1.98 maximum.

Q. Now, I suppose all of these classes of wheat have been sold in the last crop year?

A. I think so, yes.

Q. That is the crop year we are in now. Now, have there been deliveries and settlements under the International Wheat Agreement?

A. I am not sure I understand your question.

Q. Well, has grain been sold under the Agreement?

A. Very definitely.

Q. And the receiving parties have paid for it?

A. I think so.

Q. What price did they pay?

A. As far as I know, up to the present time there have been no sales under \$1.98 at basis Fort William.

Q. Now then, the International Wheat Agreement - -

A. Let me clarify it and say, as far as I know. You see, I am not a member of the Wheat Board. They are doing the selling.

Q. Are they pretty skilful traders?

A. They certainly are or they would not be in that position, sir.

Q. They are going to get the last cent for the farmer that they possibly can?

A. Yes, that is what they are appointed to do.

Q. And you have every confidence that they can do it?

A. Yes.

Q. Then the International Wheat Agreement which is in the record as Exhibit 211, is a pretty complicated document in some ways, and I wondered in view of your





great knowledge in these matters, Mr. Wesson, if you could help me with how they would fix the price within the maximum and the minimum price. How would that be arrived at? You say up to now as far as you know, \$1.98, but I think from the Briefs that you presume there is going to be some slackening off in the wheat market?

A. Well, in answer to one question yesterday I think I said something like this, that there was a basis upon which price equivalents were arrived at as the price ceilings and price floors applied to Australia and other regions. May I say this, sir, that while it may be possible, maybe probable, that trade could take place in between the ceiling and the floor, that the jugular vein of the wheat agreement, as I understand it, - -

Q. I didn't get that.

A. The jugular vein of the entire wheat agreement - -

Q. The jugular vein, yes.

A. Maybe that is not a good word.

Q. Oh, I don't know. I am sorry.

A. As I understand it, sitting through the three conferences in London and two in Washington, <sup>it</sup> finally, was based on this, that the exporting countries said to the importing countries:- "Under no condition of shortage of wheat during the next four years, will importing countries be asked to pay more than \$1.80". I am dealing with before deflation.

Q. Yes, that was all based on the relation of the Canadian dollar to the American dollar on a fixed date?

A. Yes, I am taking \$1.80 as the terms of the contract itself.



Q. Wasn't it a term of the contract that it was related to the relationship between the Canadian and American dollar at a fixed date?

A. No, I wouldn't say that. I wish you would let me answer the other question first.

Q. I am awfully sorry.

A. And then bring me back to the other one. I want to repeat that the exporting countries said to the importing countries:- "Under no condition of shortage of wheat will you be asked to pay during the next four years more than \$1.80 for No. 1 Northern Wheat, basis Fort William"; and conversely the importing countries said to the exporting countries:- "Under no condition of surplus will you be asked to accept less than \$1.50 for the first year, \$1.40 for the second, \$1.30 for the third year or \$1.20 for the fourth year

and the floor price". The question as to what might happen to what you call trading in between will, in my opinion, depend on two things.

First, Argentina and Russia are two countries not parties to the Agreement, and if the world surplus becomes burdensome before the end of this contract and either of those two countries is offering cheap wheat and cheap prices, it could be that under the International Wheat Agreement we might find ourselves, with Australia or the United States, offering to the United Kingdom or other importing countries parties to the Agreement, prices somewhere in between the ceiling and the floor. Only experience will teach us that, sir. Up to the present time as far as I know, all prices have been at the ceiling, basis \$1.80 Fort William. Now, do you mind,





your next question. I just forget it.

Q. Yes, my next question is that as I understand the agreement the price in the agreement was on the basis of Canadian currency proportionate, or with the parity for the Canadian dollar as at March 1, 1949.

A. That is right, sir.

Q. So that the effect of inflation or the devaluation of the Canadian currency was taken care of in the agreement?

A. It proves so. Would you care if I make a little further comment on this?

Q. No, I would like to have it as a matter of fact.

A. The Canadian delegation wished very much for the whole basis to be in terms of American dollars at \$1.80. The importing countries would not agree to it, but we finally got the clause agreed to in the contract which said that the \$1.80 shall be the ceiling price, and the floor price in relationship to it, \$1.80 in Canadian dollars as related to the International Monetary Fund at March 1, 1949. Is that clear? Just wait now, I am not finished, sir.

(Page 19509 follows)



Q. All right, I am following.

A. I think it has worked out very well, because when the United Kingdom changed the currency to \$2.80 per pound based on American dollars, which meant an inflation of 30 per cent as far as pounds were concerned, then our Government, rightly or wrongly, said that we won't go all the way.

THE CHAIRMAN: Q. We won't what?

A. We won't go all the way, but we will go down 10 per cent in relationship to American dollars, which would leave sterling 20 per cent inflated over Canadian. Now, suppose that clause had not been inserted, it is obvious that if the agreement had been based on \$1.80 in Canadian funds, and this other provision had not been made, immediately the Canadian Government announced devaluation of 10 per cent, that automatically would have brought the American price in relationship to Fort William price at \$1.80, 10 per cent lower than \$1.80, or a ceiling price for United States wheat of \$1.62. Is that clear?

MR SINCLAIR: Q. Could it be summed up this way, that in fairness and equity to the western farmer you demanded as his representative that he was to be protected against the effect of inflations in currencies or devaluations in currencies?

A. I don't know that we had that thought in mind. We wanted to maintain \$1.80 as stability, and we wanted it on the basis of American dollars, and we thought that was the most stable money in the world, but I think we accomplished the same objective, we achieved the same objective, by the insertion of the clause that you made reference to. Very definitely, sir, we were trying to protect the position of the western farmer.

Q. So that inflationary or deflationary effects





would not disturb the bargain that you had made?

A. That is right, sir.

Q. Now, Mr. Wesson, in Western Canada we have always heard about the fact that we have not got water competition across the prairies, and that is looked upon as a disability. Now, that is a matter that has been considered and talked about for a great number of years. Knowing 'of your interest in the farmer and in wheat, I would ask you if you think today the statement that I am going to read from the judgment of the Board quite a few years ago is still correct.

A. Which board are you referring to?

Q. The Board of Transport Commissioners. I am reading from the Western Rates Case---

THE CHAIRMAN: What year? 1918?

MR SINCLAIR: 1914; and it is reported -- I have the C.F.A. No.538, Canadian Freight Association No. 538, at page 29 of that series. It is also reported in 4 J. O. R. & R., beginning at page 98, and I have not got the page of the extract I am reading, but it is in the seventh part.

THE CHAIRMAN: Did you say page 98?

MR SINCLAIR: That is where the report begins, but where I am going to read from -- the Western Rates Case is really in chapters, and this is just near the beginning of chapter 7.

THE WITNESS: Would you mind a question? That is the old Board of Railway Commissioners?

MR SINCLAIR: Yes.

THE WITNESS: Thank you.

MR SINCLAIR: "In the matter of water competition there can be no doubt at all as to the efficiency of the waterways spread through Eastern Canada from its easterly coast and terminating with the western limit



of the most westerly division of the East -- at Port Arthur and Fort William.

It should, however, be borne in mind that while water competition is urged as being a reason for a low-rate standard in the East, the water rate, with resultant low freight, has probably played a greater part than any other factor in the prosperity of the West. The additions to water facilities which from time to time have been made are largely demanded by the necessities of providing the cheapest and quickest outlet for the ever-increasing productions of Western Canada. This affords but an additional instance of the fact that the interests of Eastern and Western Canada are closely interwoven, and that an enforced lower rate structure in the East is not as much productive of injury to the West as has been claimed."

MR MILLIKEN: Are you reading from the judgment, Mr. Sinclair?

MR SINCLAIR: Yes.

MR MILLIKEN: You do not know what page in the Canadian Railway Cases you are reading from?

MR SINCLAIR: No, but it is 1914; that would be about---

MR MILLIKEN: It is volume 17, I believe, of the Cases. I have certain quotations from page 153 of the judgment, but I have not got that. It speaks at page 159 of the judgment about the effect of water competition, and points out it spread from the eastern coast of Eastern Canada to Fort William, but I have no reference that it has spread any farther than that.

MR SINCLAIR: Well, the quotation is there; I think I have read it accurately.

MR MILLIKEN: You are quite sure it is a correct





quotation from the judgment?

MR SINCLAIR: Oh, yes. That is a very carefully put out report, Mr. Milliken. It is not a summary or anything like that; it is a full judgment.

MR MILLIKEN: I see.

MR SINCLAIR: Q. Would you, Mr. Wesson, still think that what I read to you is applicable today?

A. I would agree, sir, that there is a good deal of advantage to Western Canada because of what we call lake freight shipments. Our only regret is that navigation is not open all the twelve months of the year. As long as navigation is open, certainly Western Canada gets a good deal of benefit from the rates which apply on the movement of grain, barbed wire, and everything else that is moved in the west upon the Great Lakes to Fort William. Certainly it is an advantage to Western Canada.

Q. Now, the biggest tonnage movement on the lakes, Canadian tonnage -- I am leaving aside iron ore in the United States -- the biggest tonnage moving, Canadian tonnage moving, on the waterway is grain and grain products, is it not?

A. Yes, I would think that is true. Iron ore has become quite a factor, however, in the last year or two.

Q. And because of the particular conditions of that waterway they have been able for a large part of the haul to use very, very large bulk carrying vessels to move the grain down?

A. That is right, sir.

Q. So that they have been able to provide grain with the absolute optimum cheapest cost under known conditions?

A. Yes, sir, I admit that.

Q. Mr. Wesson, I wonder if you could help me on this: I wonder if you could tell me how the western farmers would



be harmed if the Board of Transport Commissioners on the established principles of rate-making fixed just and reasonable rates for grain, and the western farmers if they needed assistance secured that assistance from the Dominion Government?

A. What do you mean by just and reasonable?

Q. On the established principles of rate-making; that is, that we would have our grain rates fixed the same way as you fix your handling charges, that is, the cost of the movement and a little something extra?

A. On that basis, sir, you are completely discounting the Crow's Nest Pass agreement.

Q. Well, we had a discussion about that, Mr. Wesson.

A. With another witness, not with me.

Q. Well, yes. I am saying that we turn our mind to the situation I put to you; that is, I asked you if you could tell me how the western farmers would be harmed if the Board of Transport Commissioners on the established principles of rate-making fixed just and reasonable rates for grain, and if the farmers, on account of being out of balance with the rest of the economy, Canadian economy, needed assistance they secured that assistance from the Dominion Government?

A. That is, to use an illustration, if we refer back to the case I quoted yesterday in 1932, when some grades of grain were worth less than nothing, and if just and reasonable rates were higher than the existing rates, you are asking me what the farmers would think about that and whether we would be satisfied to get a subsidy from the Federal Government to take care of it? Is that your question?

Q. I say I am trying to explore with you, Mr. Wesson, how the farmer would be harmed if grain rates were fixed on



the same principles as you use in your business for fixing what your handling charges will be, and if the farmers needed assistance, because of drought or currency difficulties, or convertibility of currency difficulties, or depression overseas -- couldn't buy our wheat -- any of those examples -- and they received whatever assistance they needed from the Dominion Government; how would the western farmer be harmed?

A. Well, I could answer your question by saying this: Merely supposing that rates were doubled, if those were supposed to be fair and reasonable rates, on a 20¢ freight rate that would mean 24¢ a bushel instead of 12; the farmer would be certainly harmed if he had to pay the additional 12.

Now, I think the rest of your question, sir, is, if it could be agreed on that the grower would be subsidized from the Dominion Treasury for the total increase to what you consider to be fair and reasonable rates. If that is your question, sir, I would say that the farmer in Western Canada rests on what he considers to be his partnership in an agreement which we refer to in the last paragraph in the brief. Do you mind, sir, if I read it:

"It is submitted while the Agreement was technically one between the Government of Canada and the C.P.R., it was in fact an Agreement upon which a third party, namely, the people who settled the Prairies, relied as an inducement to build the Western economy. Canada and the Railroad must keep faith with those people."

That is our stand, sir.

Now, you are raising a question as to whether it would make any difference to the farmer if he received an equivalent subsidy from the Treasury. I can only say to you today what is the thinking of the farmers -- and I can





only say this, not for the individual farmer, only through discussion in our own Board of Directors -- they take this view, that here was a deal, to use a farm colloquialism, here was a deal made between a company and a government to do certain things, for which the company received certain concessions. If you depart from the principle of the agreement itself, then our people in the west want to know, why should the C.P.R. continue to keep and retain all the concessions that have been made, all the revenue that they have received through the years through these concessions, and may continue to do so for many years to come?

Let me go further and say this---

Q. All the concessions they received from the Dominion Government?

A. Yes, sir, and which became part of the Crow's Nest Pass agreement. I do not need to recite what they are; I think most of them are set out in the brief itself.

Q. Yes?

A. Our people feel this way about the agreement, and, as I said yesterday, they felt they were sold down the river in 1925 when rates were increased to what you refer to, sir, as reasonable rates, fair and reasonable rates, on all incoming goods. That was part of the Magna Carta. Our people would look at it this way, I am sure, that an agreement is an agreement, and, while we are not discussing the compensatory features of this question, if it could be proven -- and again supposing you were discussing the compensatory features of the question -- the C.P.R. were losing money in moving grain, then we believe that an agreement is an agreement, and inasmuch as there has been such a development of the C.P.R. through all the last forty years, with its subsidiaries, its steamship lines, its hotels, its projects in British Columbia, the Trail Smelters, and all



other ramifications that the C.P.R. has all over the world today -- we may be wrong in this, sir, but we think a lot of those developments were made, not from investments of shareholders, but rather from profits taken from the entire business as the years went by. Then we say that this question should not be approached until such time as all other avenues are used to take care of the entire operation of the company. Then if you get to the place where the C.P.R. can come to the Government and say the company as a whole, the C.P.R., is insolvent, then I think we will be all prepared to look at the question. In the meantime I would say---

THE CHAIRMAN: Q. You think what?

A. If we came to the place where the C.P.R. with all its ramifications and all its business interests proved to be insolvent, then I think we could look at the question.

Q. You could what?

A. We could look at the question. But, inasmuch as we are not dealing with these rates on a compensatory basis -- I understand that, sir -- the whole revenue of the C.P.R. must be used, if there proves to be a loss in that phase of the operation, and that is our view of the contract. Then I would say this, sir: If you get to that place, come right down to the point now -- and I am sorry I took so long to deal with this thing -- you asked me if the farmer would be satisfied with a subsidy. My answer would be, if there is to be a subsidy, sir, it should be a subsidy to the C.P.R. and not to the grain growers of Western Canada.

MR SINCLAIR: Q. All right; that is where I thought we would finish up. Now, Mr. Wesson, I suggest to you that the Canadian Pacific has a rail enterprise,





that is, it provides transportation for goods and people. Now, say that it divested itself of everything except that rail transportation enterprise, sold it, all those other things, and distributed the money to the shareholders, and said, "We are a transportation company, and we are entitled to just and reasonable rates under the statute." Do you think different principles apply under that circumstance than do today?

A. I would say, sir, if the railway company confiscated all the earnings and all the concessions made and distributed that money to the shareholders, they would have broken the contract.

Q. Well, I am not going to argue the contract with you, Mr. Wesson. I am sure that others here will be arguing it, and I will be putting my view, and I have a little different view from yours, except I say to you that the Canadian Pacific is prepared to carry out the terms of the contract, and you say that you would not be satisfied with that?

A. Would you repeat that? I don't get that.

Q. That if the C.P.R. was prepared, that it is prepared, to carry out the terms of the contract, you told me yesterday you would not be prepared to accept that?

A. You mean the old terms that applied to the existing points in 1897, as against the wide expansion today?

Q. Yes.

A. I think that would be intolerable. Might I, while you are looking up the next question, sir, say this, that the story I told you---

Q. I don't want to hurry you, Mr. Wesson, but---

A. The story I told you yesterday, sir, about our settlement on the C.N. line, was predicated on the fact that the C.N. or the old Canadian Northern in those days



had built the line up clear to Edmonton and were prepared to meet the rates of the Crow's Nest Pass, even though there was no competition of the C.P.R. up in that section of the country. If it had not been so we should have settled a lot of the land on the C.P.R. and not the C.N.

Q. Now, Mr. Wesson, if grain rates are not bearing their full share of the cost of transportation, and the amount that they are below that level is made up by higher rates on other commodities, would you agree with Professor McDougall when he said that the farmer on the very poor soil north of Kingston, Ontario, is paying out of his poverty to help the farmer on the rich soil of the Qu'Appelle Valley -- and I don't know if I can add the Regina Plains and the Portage Plains?

(Page 19521 follows)



A. I would say that your question is predicated on an assumption that has not yet been proven.

Q. Oh, I see. I am asking you for the sake of argument --

A. You are assuming something.

Q. --to assume that; and the result is that the farmer with that very poor soil north of Kingston is paying out of his poverty in order to help the farmer with that very beautiful soil in the Qu'Appelle Valley and the good soil of the Regina plains and the excellent soil of the Portage plains.

A. Except this, sir, that I am not a freight rates expert; and after listening to this discussion, I never hope to be. But it does seem to me, as to the question you are asking me about the position of the poor farmer in the section of Ontario, that he is in no worse position than the farmer out west who pays, as I understand it, more of this additional freight on all the things that he buys; and if there is to be a difference, it is only on the Crow's Nest agreement rates on his wheat and grain. He is paying just as much as the other fellow.

Q. I know that you are trying to help me, Mr. Wesson.

A. I am.

Q. But I do not think you followed my question.

A. I am sorry.

Q. My question was this. I would ask you to assume that the present rates on grain are not bearing their share of transportation costs.

A. I am sorry, but I cannot assume something which I cannot believe to be true.

Q. Oh, you cannot?

A. No, sir.

Q. You just never mind whether it is true or not.





Just accept it as a fact. You can accept something as a fact. I mean, for instance, there is a desk here.

A. All right.

Q. All right. You accept my assumption as a fact.

A. But the non-compensatory features of the grain rates are not proven to me.

Q. All right. You accept what I say as a fact and we shall go on from there.

A. You mean for the sake of this discussion?

Q. Yes.

A. All right; not to be held in evidence against me.

Q. If you can disprove the assumption, that will not be held against you. I ask you to accept as a fact that the Crow's Nest rates on grain are not paying their proportion of transportation costs and as a result other rates are higher than they otherwise would be.

A. I am sorry, sir; you are again putting your assumption as a fact, and I will not admit the fact.

Q. I ask you to assume it as a fact or take it as a fact.

A. But it is not a fact.

Q. If you can disprove it, Mr. Wesson, that is fine. I say that it is a fact. You say that it is not a fact. All right. I ask you to assume that I am right.

A. All right; for the purpose of the discussion.

Q. For the purpose of this discussion, can you assume that I am right?

A. For the purpose of the reply, I will try.

Q. All right; for the purpose of the reply you will assume that?

A. I will try to.

Q. All right. You have got the point or the assumption that you are assuming is correct.

A. What you are saying is that if we assume that



that there is a loss to the railway in moving grain on the Crow's Nest Pass rate, and so that the C.P.R. can advance the rate --

Q. Just a minute; I said therefore other rates are higher than they need be.

A. I am coming to that.

Q That is what I am asking you to assume.

A.--to offset this assumed deficit. That these other rates are high? You are asking me if it is fair for the farmer on poor land somewhere in the province of Ontario,-- whether it is fair to ask him to pay the difference?

Q. Pay a proportion.

A. His proportion of the difference?

Q. Yes.

A. I would say if your assumption is true, which I do not accept, it is unfair. I do not accept your assumption, however. And then, carrying on further --

Q On page 12 of your brief you refer to the matter. It is the second complete paragraph.

A. That is the change we made yesterday?

Q. Just a minute.

MR. SINCLAIR: I am sorry, my lord. I had forgotten to strike off my questions. Mr. Covert covered that. Thank you, Mr. Wesson.

MR. O'DONNELL: May I ask a few questions, my lord?

THE CHAIRMAN: Yes.

EXAMINED BY MR. O'DONNELL:

Q. Mr. Wesson --

THE CHAIRMAN: I think you had better come up to the front, Mr. O'Donnell. This "one question " business usually extends itself to a great many.

THE WITNESS: I have to turn to look at you to answer; the acoustics are wrong in this building or my voice is not right.





THE CHAIRMAN: That is why we put that desk where it is. CROSS EXAMINATION BY MR O'DONNELL:

MR. O'DONNELL: Q I just have a very few questions, Mr. Wesson, and I am only interested in the statements which appear at page 11 of your brief concerning wages and salaries of railways employees and the remarks that you made in connection with that matter.

THE CHAIRMAN: Would you tell us again where this is in the brief, so that we may have it before us?

MR. O'DONNELL: It is page 11 of the brief, and it on page 19,451 of the transcript or around there.

THE CHAIRMAN: You say it is page 11; of which brief?

MR. O'DONNELL: Of Mr. Wesson's brief.

THE CHAIRMAN: All right.

MR. O'DONNELL: Q Mr. Wesson, just so that you will know whom I represent, may I say that I am acting for the Canadian National Railways.

A. I knew that.

Q I just wanted to know if you would be good enough to tell the commission how many employees the elevators, the pool elevators, the cooperatives and the wheat pool, have. On its first page of your brief you said that you had a membership of 185,000 grain growers, and I understand that you have about 11,000 elevators in Saskatchewan alone. Is that right?

A. Yes. The Saskatchewan pool elevators, at the end of last July, owned and operated 1,162 elevators.

Q. Could you say how many employees?

A The three pools altogether, as of last July, was 1883.

Q. And could you give the commission any idea of the number of employees who worked in the pools?

A. There is one elevator man for each elevator, plus helpers in the rush seasons. I would think that would



be about, until 1,162 elevator operators, and our entire staffs in the offices in Regina, Winnipeg and Fort William, somewhere around 1,800.

Q. 1,800?

A. That is Saskatchewan alone. That deals with terminal staffs.

THE CHAIRMAN: Is this 1,800 you are now referring to in addition to the operators?

MR. O'DONNELL: To the 185,000 members.

THE CHAIRMAN: It is in addition to these elevator operators, is it?

MR. O'DONNELL: No.

THE WITNESS: No.

MR. O'DONNELL: I think that includes them.

THE WITNESS: No, my lord; there is one man to each elevator. I think you know that.

THE CHAIRMAN: Yes.

THE WITNESS: We have helpers. They have temporary staff. Then we have staffs in our offices in Regina. We have travelling superintendents in the country, 42 of them, and staffs of different kinds. We have our Winnipeg staff and staffs in our terminal operations; and speaking from memory it is just under 1,800 in the Saskatchewan organization.

THE CHAIRMAN: Q. In the Saskatchewan organization?

A. In the Saskatchewan organization; that is right. I have no knowledge as to the number of the staffs in the Manitoba or in the Alberta pool, except that I take it for granted that they have one elevator man at each elevator and the total of the three pool elevators is 1,183 as of last July.

MR. O'DONNELL: Q. What I should like to get at is this. Apart from the 185,000 members, how many farmers and farm employees and over-all personnel would be



interested in the operations which are conducted by the cooperatives and through the membership. How many farmers and people in the west does your organization speak for when it is putting before this commission certain recommendations concerning what should be done with respect to resisting the increases that have been asked for by the railway employees in their wage rate.

A. I see what you are getting at.

Q That is the point I am getting. What order of public opinion did you speak for when you make your statement?

A. In our brief we say we have 185,000 members in the three pool organizations. I can tell you that in Saskatchewan it is 136 something, but we have some dead wood, or what we call dead wood. People die and their estates are left. But we say that 100,000 put themselves in this. The Saskatchewan pool elevators always handle a little better than 50 per cent of all the grain delivered in the province.

Q. The 185,000 members would have three or four employees on each farm possibly or what number would that be? Can you give us any estimate of the number of people who are employed by the members ?

A. Well, I really do not know.

Q Just in round figures.

A Do you mean farm families or just employees?

Q. Yes, all those who are interested in grain growing--

A. I do not know.

Q: --and the grain which is handled by your elevators and through your pools. You represent considerably more than 185,000 people.

A. Oh, yes.

Q. That is what I mean.

A. All the farm families.





Q. You have suggested that the railways should resist and resist to the extent even of risking a strike?

A. Yes.

Q. And I am just asking you if you will give us some idea of exactly how many people in western Canada would be of the same view as you and for whom you speak at this time?

A. Let us take five to a farm family.

THE CHAIRMAN: Q. Take what?

A. Five to a farm family; and if you multiply that by 185,000, I think you would get --

MR. O'DONNELL: Q About 758,000 people?

A. That is right. Then of course there are large farm families who do not belong to our organization.

Q That is right.

Q. From what you know, and I take it that you are in close contact with farm opinion in the west,--

Q Yes.

Q' --do you think that farmers generally share your view in this respect?

A. Yes. The farmers do not believe that the railway employees are entitled to any more income than any other segment in the economy. They believe with me , and this is illustrated by our delegates here and during the annual meeting. I want to repeat what I said yesterday, that while we do not object to collective bargaining, we believe these people ought to be fair and when they get arrogant and want too much -- well, if it cannot be settled, let them strike and cool off.

Q. That is what I am interested in getting at.

Mr. Justice Cameron <sup>as</sup> was chairman, / you will remember, of the conciliation board that went into the wage dispute in 1947; and Mr. Hannam in his submission to this commission on November 8, 1949 --



THE CHAIRMAN: Mr. who?

MR. O'DONNELL: Mr. Hannam.

THE WITNESS: He is president of the Canadian Federation of Agriculture and I am a member of the executive.

MR. O'DONNELL: Yes. Mr. Wesson is quite well aware of him. He says he is a member also of that executive. His remarks are reported in Volume 40, at page 7,537. Mr. Hannam said:

" In January 1948 report of the Board of Conciliation on a wage dispute between railway workers and the railways, the Chairman, Mr. Justice J.C.A. Cameron, remarked as follows:

And this is a quotation within a quotation.

" It is admitted that for many years railway wages were in most instances above, and in many instances very considerably above, the wage rates of industry generally. It is the declared purpose of the applicants to secure and maintain that differential in favour of railway workers."

And he quotes the Labour Gazette on that point. We had a Mr. Kelly here --

A. Pardon me. Is that in the Federation brief?

Q. Yes. That is right in the Federation brief. I read Mr. Hannam's remarks from the pages I have just given. We had Mr. Kelly before the commission here as the representative of certain railway employees and certain unions; and Mr. Kelly said that the railway employees would never be satisfied -- and I am paraphrasing or summarizing -- until they had achieved parity with United States railway employees, and that their demands would be pressed until that time. Do you think that that is an attitude that should be acquiesced in?

A. I think it is wrong; because there can be no





comparison between the economy of the United States and the economy of Canada.

Q And would you say that the farmers of western Canada would agree with you in taking the position that that suggestion of Mr. Kelly and the position indicated by the quotation from Mr. Justice Cameron's report should be resisted?

A. Absolutely. We would not agree with it at all.

THE CHAIRMAN: Mr. O'Donnell, would you tell me this? There are two conciliation boards now sitting.

MR. O'DONNELL: Yes.

THE CHAIRMAN: Are the demands made before those boards such as would make the salaries in Canada equivalent to those in the United States?

MR. O'DONNELL: I cannot say as to that. But the demands would total somewhere in the neighbourhood of \$74 million or \$75 million a year.

THE CHAIRMAN: Extra?

MR. O'DONNELL: Yes, extra. I might just read what these demands are, so that Mr. Wesson and the commission would have them in mind. At page 7,544 of the transcript Mr. Hannam is reported to have said:

" In June this year the fifteen --  
And that was last year, 1949.

" -- International Railway Unions and the Canadian Brotherhood of Railway Employees made a demand on the railways of Canada for increases in wages and shorter hours of work. Specifically they are asking for a 40-hour work week (now 48 for most employees) with an increase in rate per hour so that take-home pay will be the same, and an additional 7 cents per hour. Moreover, it was stipulated that the employees must have two consecutive days off each week. If they worked



"any hours on these free days they were to be paid time and a half.

Another union, the Canadian Brotherhood of Railway Employees and Other Transport Workers has made a demand for the 40-hour week and an over-all increase of 30 per cent --

That is the way it is quoted here.

" --per hour. So far the railway trainmen have not brought forward any demands.

The railway companies have stated that the above-mentioned demands would increase the wages bill of the railways by \$74 million a year. "

Q. Those are the demands which are presently under discussion.

In connection with the present demands, Mr. Wesson, a situation may arise where a decision has to be made again by those who have the responsibility of endeavouring to keep the railways running, and I am interested in having as clear a statement as possible from you as to the extent of the support which the management could expect from the farmers of western Canada if they were to go along with your suggestion that these increases should be resisted even at the risk of tying up the railways.

A. My own opinion is - and at this time it can only be an opinion - that you will get unanimous support from the farmers of western Canada and all consumers living in the towns and villages.

Q. Is it your view that to accord the further increases to the extent of say \$74 million a year to the railway employees of Canada would be out of line at the present time with the wages received by other persons who are employed in the Canadian economy?

A. I think it would be intolerable. I have a note here which shows that, I think since 1941, wages have increased over \$200 million to the railway employees.



This is from a newspaper clipping. I do not know whether that is authentic or not. But I would go back again to this one thing that I made reference to yesterday, and I think it is part of the Federation's brief presented by Mr. Hannam, from the dominion bureau of statistics May I be permitted to give another quotation following the one you made before?

Q. Yes.

A. It is as follows:

" In the same report the Chairman discussed the situation of the farmers in relation to the demand of the railway employees for a substantial increase in rates of pay (35 cents per hour), in these words:

" In Canada agriculture, by supplying the domestic and British markets at prices substantially below prevailing world markets, has and still is making an annual contribution to this purpose, costing its people sums of money greatly in excess of those involved in these wage demands."

In other words, they have got the impertinence to say: "If you farmers that have taken all the traffic will bear when during the war the government of this country was trying to keep down prices and stop inflation - if you people will take all the traffic will bear and then turn around and turn it over to us through wages, everything will be all right. I say that statement is impertinence.

MR. O'DONNELL: That statement which Mr. Wesson has just read, my lord, will be found at page 7,538 of the transcript. I might just add two further paragraphs at this point for the purpose of facilitating the study of it later. The quotation that Mr. Wesson read goes on as follows:

" While the farmer is both a worker and a





"manager, the greater part of his returns from farming is earned as a labour income, with long hours daily at physical labour, which places him in the same category as the working man in other industries.

It is generally recognized that a high level of purchasing power amongst all groups in the nation is a desirable condition in any country. At the same time, severe injustice is done when great differentials in rates of pay are allowed to develop between major groups and especially when a group with high rates secures its advantage by placing an extra burden upon a lower income group."

Q. Your view, then, Mr. Wesson - and I ask you for it, and I ask you to say that you are speaking on behalf of all these pools and the people who are interested in them -- is that at the present time the gap is already too great between the wages received by the farmer and the people whom he employees? --

A. Yes.

Q. -- and those who are operating the railways?

A. This dominion Bureau of Statistics Schedule I think proves that contention.

Q. Just thinking along further, if there was a strike and the railways were tied up, it would very adversely affect your people in the west, would it not; and would affect them possibly more quickly there than in many other areas?

A. I suppose so; but no more than the snow slides in the mountains affected the same situation a few weeks ago in British Columbia; the same result.

Q. But snow slides are a matter of a few days.

A. The results are just the same.



Q. If a strike were to run into any extensive period of time, would your views be the same, that your demands should be resisted and there would have to be a show-down at some point?

A. I think I said yesterday that our organization believes in collective bargaining, but we do not believe in conceding to unreasonable requests in the collective bargaining. If you face that situation, your bargaining will continue and finally you will come to a conclusion, I presume amicably, and settle to the satisfaction of both railway companies' employees; always keeping in mind, coming back to the same things, that other people do not believe in it, that if your<sup>are</sup>/going to continue increasing wages of railway employees, then that involves an increase in freight rates that every other segment in the economy must pay. I think that is unsound, unfair and wrong.

Q. And should be resisted to the full?

A. And should be resisted to the full.

Q. You, I assume, Mr. Wesson, are in fairly close contact with people in authority in the three provinces. Do you think the Governments of the provinces may go along with your view and the view of the farmers generally as you have expressed it?

A. I cannot answer that. The counsel here from the three provinces might answer. I can't.

Q. Now, just as a matter of interest, my lord, I might say that in 1949 the 17¢ wage award cost the Canadian National Railways \$40,282,000.

A. Yes, I have that figure here.





Q. Yes, and Dr. Innis asked a few days ago if we would arrange or procure information similar to that provided by Exhibit 216 which was filed by the Canadian Pacific Railway. Dr. Innis asked for that, I think, in Volume 98 at page 18400. I would therefore produce as Exhibit 262 a statement which is entitled:- "Canadian National Railways, Canadian Lines, Analysis of Wage Bill and Number of Employees, Year 1949" which gives the information, Mr. Chairman and Commissioners, in the same form as the C.P.R. provided.

...EXHIBIT 262...filed by	:	Statement entitled:-
Mr. O'Donnell	:	"Canadian National Rail-
	:	ways, Canadian Lines,
	:	Analysis of Wage Bill
	:	and Number of Employees,
	:	Year 1949".

THE CHAIRMAN: Are there any other questions for Mr. Wesson?

MR. O'DONNELL: Mr. Frawley suggests that I might draw to the attention of the Commission the way in which the schedule is drawn up. I thought it was fairly clear, but you will notice number 3: "Number of Employees" and then we have the heading "Schedule and non-Schedule" (that means unionized and non-unionized) engaged in those various occupations, year 1949:- "Maintenance of Way, Maintenance of Equipment, Transportation and Other".

THE WITNESS: Thank you, my lord, for your patience.

THE CHAIRMAN: You are very welcome, Mr. Wesson. We are very pleased to see you.



THE CHAIRMAN: Now, Mr. Steer, you represent the United Grain Growers?

MR. STEER: United Grain Growers Limited, my lord.

THE HONOURABLE J. E. BROWNLEE - CALLED

EXAMINATION-IN-CHIEF BY MR. STEER:-K.C.

Q. You, Mr. Brownlee are the President of the United Grain Growers Limited?

A. I am.

Q. And will you briefly state to the Commission what your connection has been with what we will call the farm movement in Western Canada?

A. I have had, I think, quite an intimate relationship with the farm movement since about 1913, first as general counsel of various farm organizations in Alberta working very closely with them as part of the Government of Alberta Farmers' government, <sup>and</sup> from 1921-1935; then as President, at least as general counsel for United Grain Growers and again for many of the farm organizations in Alberta, and latterly as President of the Company.

Q. And perhaps you will give a brief description of the nature and activities of this United Grain Growers Company?

A. It is a farmer-owned and controlled company operating 625 country elevators in the three provinces and with terminals at Vancouver and the head of the lakes. It differs somewhat from some of the other grain companies in that we have quite a large farm supply



business, other commodities (coal and so forth) sold to the farmer. We also own and control the "Country Guide" which is a farm publication with a circulation of about two hundred thousand in the Prairie Provinces.

Q. And has your organization considered this question of the Crow's Nest Pass rates?

A. Yes, sir, starting first with a resolution at our annual meeting in November 1949 protesting against any change; in asking the officers to file a Brief, the preparation of a Brief, the approval of that Brief by the board of directors, and now the submission of it, sir.

Q. And the Brief has been filed, and, with the approval of the Commission, I would ask that it be taken as read.

(Brief follows)





SUBMISSION OF UNITED GRAIN GROWERS LIMITED  
TO THE ROYAL COMMISSION ON TRANSPORTATION

1. United Grain Growers limited is the oldest farmer-owned commercial organization in Western Canada. It is principally engaged in handling grain. It operates some 625 country elevators, with terminal elevators at Port Arthur and at Vancouver. It has approximately 40,000 farmer members in the Prairie Provinces. It owns and controls "The Country Guide", a monthly magazine devoted to agriculture, with a circulation of over 200,000 copies, going mainly into farm homes on the Prairies. Established in 1906, it has for more than forty years been part of the farm movement of Western Canada and has been recognized as an accredited spokesman on behalf of Western agriculture, particularly with respect to matters affecting the production, handling and marketing of grain.
2. We appear before you to oppose the proposal of Canadian Pacific that your Commission should recommend amendments to the Railway Act which would do away with the Crow's Nest Pass rates as fixed by agreement and confirmed by statute, and thus place all grain rates under the Board of Transport Commissioners.

The principle of excluding these grain rates from the jurisdiction of the Board of Transport Commissioners and of regulating them by statute has over a half century become firmly established in the national policy of Canada in relation to the development of Western agriculture. We suggest that your Commission would require convincing evidence of very substantial danger to the public welfare before recommending that an end be made to this historic national policy.

Canadian Pacific in Paragraph 7 of its Outline



Submission protests that neither Parliament nor the Governor-in-Council should provide the arenas in which questions primarily for the administrative tribunal are argued and disposed of.

The fact is that historically Parliament has provided the arena in which the question of such rates has been argued and disposed of. The whole history of the development of Western Canada and of the contribution of the grain growing industry of the Prairies to the economic welfare of all Canada provides justification for that fact. Certainly no change from the present statutory control of export grain rates is possible without throwing the whole question into the arena of Parliament for decision.

3. The proposal raises an issue of vital importance to every producer of grain on the Prairies. Instead of enjoying, as at present, Parliamentary protection of grain rates, designed to encourage production and increase purchasing power over the Prairies, farmers would face the certainty of substantial increases in grain rates based primarily on the alleged overall need of the railways for greater revenue. Appendix 1 hereto sets out the existing rates from a number of points in the Prairie Provinces, to Fort William and Vancouver. It requires but a glance at that exhibit to realize the additional direct levy that would be made on every producer of grain by an increase of from 30 to 50 per cent. The proposal comes at a time when prices of farm products have started to decline and when there is considerable apprehension of loss of overseas markets for some farm products. It has become a matter of extreme concern to Western farmers.





4. The rates in question apply substantially on grain for export. Upon that fact rest both their importance to grain producers, and the justification for control by Parliament.

In practice it has continuously been recognized that grain consigned to the lakehead enters export channels at that point. Its value is determined there, on the basis of factors which govern export prices. Most of it is actually exported from Canada, although a portion will move for domestic consumption in Eastern Canada. The cost of transportation to the lakehead is entirely borne by the producer. He must absorb that cost in order to sell his grain on the basis of export prices at that point, and he does so whether he sells his grain in store in a terminal elevator there or upon delivery at a country elevator in Western Canada. The whole structure of the Western grain trade and of grain prices has been built upon that principle. The principle is the same when grain is consigned to Vancouver for export.

5. The economy of the Prairie Provinces is built primarily upon the production of grain for export. That is the basic fact upon which this presentation rests.

The Provinces of Manitoba, Saskatchewan and Alberta, together with the Peace River district of British Columbia, include a great agricultural area which has been developed, mainly during the past half century, as a result of a deliberate national policy. That development has been based and still rests upon agriculture - an agriculture essentially export in its nature for the simple reason that only by export can a market be found for its products. Soil and climatic conditions over most of the area lend themselves pecu-



liarily to grain growing. The extent of other branches of farming is limited not only by natural conditions but also by markets. The great bulk of grain produced must be exported as grain. Only limited quantities can be marketed in the form of livestock products, or even as flour. The Prairie farmer must typically be a grain producer and one producing for export. Wheat has been, and still is, the most important grain, although under special conditions prevailing during recent years, there has been considerable export of oats, barley, rye and flax. Wheat has thus been directly the foundation of the economy of the West.

It has also contributed very greatly to the economy of Canada as a whole. Much has been written to show its importance to Canadian industrial development as well as to show that the economic and political structure of Canada has largely been built up in relation to its production and export. Expansion of industry in Eastern Canada was in large measure a consequence of the opening of the West and its development since the beginning of the century. Wheat has provided the primary reason for enormous investments of capital in Canadian transport, industry and agriculture. Crop conditions in the West are annually the subject of anxious scrutiny in other areas and crop returns affect business conditions throughout Canada.

One other fact about Western agriculture needs to be stressed. In spite of the great wealth it has produced over a period of years, its income is extremely variable. Low prices in depression years affect it more severely than is the case with most segments of the national economy, while extreme climatic variations bring



about alternate periods of good and of poor crops. That variability of income is vividly illustrated in some figures published by the Royal Commission on Dominion Provincial Relations\*. The net cash income of Saskatchewan agriculture for the year 1928 is shown at 220.2 million dollars. Contrasted with that figure are net cash losses for the years 1931-32. Net cash income increased during the next few years to 55.8 million dollars in 1936. Recent years have again provided high annual cash income for the province as a whole but large areas, both in 1948 and 1949, have suffered severely from drought.

6. The development on the Prairies of grain growing for export has been a matter of national policy since Confederation, a policy which included both the building of railways and the regulation of freight rates on grain for export.

Confederation itself had that development as one of its central objectives, as shown by Dr. Creighton in his study of British North America at Confederation.\*\*

Professor Chester Martin describes the development of railway and land policies to carry out this national

\*National Income, Appendix 4 - of the Report of the Royal Commission on Dominion Provincial Relations, Page 86.

\*\*Appendix 2 of Report of Royal Commission on Dominion Provincial Relations, pp. 31, 42, 48, 89.





purpose, as follows:\*\*

"But if 1870 marked the end of one epoch it also marked the beginning of another. The westward expansion of the new Dominion was a 'national necessity', and it could be brought to pass only by policies truly national in their scope. It was determined to retain the public lands as a national appanage to be 'administered by the Government of Canada for the purposes of the Dominion'. This applied to the new province of Manitoba as well as to the territories beyond. The twin problems of railways and settlement could be solved by no other expedients at that time. These were 'good and sufficient reasons of public policy', and they have never been disputed; but the process had consequences that could scarcely have been foreseen. It transformed the Dominion from a federation of equal provinces into an empire with a quarter of a continent of 'Dominion Lands' under direct federal administration. For sixty years this vast domain was 'administered by the Government of Canada' until the historic 'purposes of the Dominion' were fairly achieved, so far as public lands could help to achieve them".

The vigorous immigration policy based on land grants pursued by the Government of Canada and the encouragement of railway building both by the Dominion

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\*\*Preface to Dominion Land Policy, Page 196, Vol. II. of Canadian Frontiers of Settlement, The McMillan Company of Canada, 1938.



and by Provincial Governments are too well known to need description here. Soon after completion of the Canadian Pacific Railway in 1885 it became apparent that railway rates as well as railway building required attention.

Dissatisfaction with high rates led to the chartering of other lines by the Province of Manitoba, and, in 1901, to an agreement with the Canadian Northern Railway, under which the Province was to have the right to fix rates on the Company's lines between points in Manitoba and Port Arthur. That was to result in important reductions in rates on grain, which continued for some fifteen years.

7. It can be understood, therefore, how important the question of freight rates on grain appeared to the Government of Canada in 1897. In that year, it made freight rates on grain part of its agricultural policy, when it entered into the Crow's Nest Pass Agreement, an important consideration of which was the undertaking by Canadian Pacific to reduce existing rates on grain by three cents per hundred pounds and that these reduced rates should thereafter be maximum rates. That agreement was confirmed by Act of Parliament.\* The policy thus

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\* The same agreement also covered reductions on certain commodities shipped into Western Canada, considered to be particularly important to settlers. Rates on such commodities were eliminated in 1925 from the statute and were placed under the jurisdiction of the Board of Railway Commissioners. When that was done a clear line was drawn between the export grain rates in question and all other railway rates.



inaugurated was emphasized in 1903, when the Board of Railway Commissioners was first established. Freight rates on grain, having come under Parliamentary control, were deliberately excluded from the jurisdiction of the Board.

In 1919, to meet what was considered a temporary emergency arising from war-created conditions, the Railway Act was amended to extend the jurisdiction of the Board to all rates. Temporary increases in grain rates resulted. However, it was provided that this suspension of the Crow's Nest grain rates should be for three years only. This fact emphasized a continuing national policy of keeping these grain rates under statutory control. This policy was again confirmed in 1922, when Parliament provided for an immediate reversion to the Crow's Nest rates.

This national policy was once more confirmed and was strengthened by the further amendment to the Railway Act of 1925, which has stood unchanged since then. By it, all other freight rates were put under the jurisdiction of the Board of Railway Commissioners, now the Board of Transport Commissioners. But it provided that rates on grain and flour should be governed by the provisions of the agreement and should apply to all such traffic from all points on all lines west of Fort William to Fort William. At the same time Sub-Section 6 was enacted. In effect it insured that export rates on grain to Pacific ports would be established and maintained on a basis corresponding to that applying to the lakehead.

The fact of a definite and continuing national policy on export grain rates is thus established. The reason for it is to be found in the national policy of





developing the Prairie area of Western Canada on the foundation of an agriculture producing grain for export. Its justification is to be found in history, and the vast contribution which Western Canada has made to the economic life of Canada.

8. The extent to which the development on the Prairies of grain growing for export has been a matter of national policy, and the importance of that development to Canada is aptly set out in words of the Royal Grain Inquiry Commission report of 1938:\*

"It has abundantly been shown in this report that in the past no commodity has contributed more than wheat to the wealth and the export trade of the country. The settlement of Canada's prairie regions was from 1870 onwards a fixed principle of Canadian policy. It will be found in an Order-in-Council of Sir John A. MacDonald's Government of May 30, 1884, and was formally adopted and reiterated by Sir Wilfred Laurier on February 21, 1905. Through all the years and down to recent times great efforts were made to induce the flow of population to those territories. In the last years of the World War, when the world was said to be facing the prospect of famine, propaganda was conducted under government auspices urging our farmers into the greatest possible production of wheat. These lands were again selected for soldiers' settlement after the war."

9. The whole development of Western Canada, based as it was upon an agriculture producing grain for export, has taken place against the background of the policy just described. Approximately two and a half million people

\* Report of the Royal Grain Inquiry Commission, 1938, p. 189.



have now settled in that area, the great majority of whom are there because of the growing of grain for export. Every farmer who took up land by homestead or purchase was encouraged to do so by the assurance of Parliamentary regulation of grain rates. A quarter of a million grain producers have an investment valued at more than two billion dollars. Every man who set up business in Western Canada was entitled to make his plans in the knowledge that the Government of Canada, by its policy on grain rates, was determined to foster the business of grain production upon which the whole prosperity of the West was to depend. The policy began with the agreement between the Government and Canadian Pacific. It has developed over the years and is today regarded by Western agriculture as having established an assured right to Parliamentary control upon which producers of grain may rely with confidence.

10. There are other reasons why this national policy with respect to grain rates should not be disturbed. These are found in the peculiar position of the Prairie grain producers in relation to the transportation of grain over hundreds of miles to terminal markets. They obtain no benefit whatever from factors which exercise a controlling or regulatory effect in other areas, such as water competition, which plays an important part in the regulation of freight rates in the central parts of Canada; truck transportation which is becoming more and more a competitive factor with respect to the movement of other goods; and other forms of competitive transportation.

Producers of grain have no protection whatever from the general principle of railway rate-making in accordance with "what the traffic will bear". As Canadian Pacific says, the principle is "more correctly



stated as being one of charging no more than any type of traffic will bear".

Undoubtedly in a great many cases, and quite possibly in the majority of cases, the principle of "what the traffic will bear" does provide protection against excessive railway rates. An exception, however, exists in respect to export grain rates to the lakehead and to Pacific Coast points, and in that fact lies one of the most important reasons for statutory restriction of such rates. With respect to other commodities this principle establishes an upper limit to what may be charged, or otherwise the traffic will not move. It is not so with respect to grain.

So far as Western grain is concerned, it must move to export points, almost regardless of the rate. Farmers on the Prairies, taken as a whole, must produce grain for export if they are to farm at all. They have no alternative to accepting both the export price available at points of export, and the prevailing cost of transportation to such points.

Grain export must go on whether the net return to the farmer is high or low. He must, and will, sell his grain so long as the price to be realized at the point of export provides a margin, however small, over the cost of getting it there. So long as the farmer remains on the land the Western grain movement would not be brought to a halt even by preposterously high rates, just as it was not brought to a halt when disastrously low export prices prevailed, as for example, during 1931 and years immediately following. The Western grain farmer finds no protection whatever in the principle of "what the traffic will bear."





11. While we have stressed the relation of the Crow's Nest Pass grain rates to national agricultural policies in Canada, we also attach importance to the fact that these rates were first established by agreement. We believe Canadian Pacific is still bound to carry out the terms of that agreement.

The Company voluntarily entered into the agreement of 1897, and we have no doubt in good faith and with a full knowledge of its implications. In addition to a substantial subsidy, it obtained what has since become an effective railway monopoly in a part of Western Canada where its line has become valuable because of the amount of originating business, particularly in relation to mineral development. The agreement resulted in grants of lands and mineral rights. In return, the Company agreed to maintain permanently a definite limit to the level of grain rates. The agreement was confirmed by statute and only by clear and definite Act of Parliament can the Company be relieved of its terms. We join with those who maintain that the agreement is still in full force and effect and that Canadian Pacific is bound by its terms until relieved therefrom by the other contracting party. During the debates in the House of Commons in 1922, the then Prime Minister of Canada, the Rt. Honourable W.L. McKenzie King, stated: "Unless it can be shown that in the public interest there are good and sufficient reasons why, what is termed the Crow's Nest Agreement of 1897 should not again become operative in July next, the existing statute will not be interfered with." We submit that no evidence is before your Commission that it is in the public interest of Canada that an agreement which so vitally concerns a large and important part of Canada should be



disturbed.

In fact, Canadian Pacific, on Page 160 of its Submission, states that, "In advocating the repeal of the provisions of the Railway Act relating to rates on grain, it "cannot be accused of seeking merely to avoid a contractual obligation". On the same page it states that between 1903 and 1917 the reduction brought about by the agreement was probably in large measure born by Canadian Pacific. (This is to ignore the fact that between 1902 and 1917 the agreement was inoperative because of lower rates resulting from the Manitoba agreement with the Canadian Northern Railway). On the following page, however, it states that since 1922 "the probability is that the greater burden imposed by the low level of these rates has fallen upon shippers and consignees of other traffic." It then proceeds to show that in the 21% Case, the Board found a deficiency in revenue of the Company at something more than 30 million dollars, and that if this additional revenue had been derived by an increase in rates on grain traffic, as well as on other revenue traffic, the resulting increase would have been 18% instead of 21%.

Very little evidence, however, has been submitted to your Commission to show that this difference of 3% is a matter of concern to other interests in Canada. As applied to the greater majority of rates, the difference would be very slight as compared with the additional levy which would have resulted to grain producers in Western Canada if grain rates had been increased by 18%. However, on Page 55, Canadian Pacific itself gives an answer to the claim of a burden on shippers or consignees of other traffic. It says: "the incidence of freight charges is



on the economy as a whole", and "that it is totally impossible to draw lines on the map or to establish distinctions between groups or individuals, and to assure that this area, that group, or a certain type of individual is more burdened by transportation costs than is some other". In a later section of this submission we show that while that statement may be true of freight rates generally, it does not apply in Western Canada to rates to water level on grain for export.

12. In considering the relationship of freight rates to Western agriculture, it would be well to remember that the depression of the 30's remains vividly in the memory of Western farmers. The impact of that depression was in large measure increased by the fact that Western agriculture suffered from a period of both low prices and low yields. If during that period of acute distress the position of Western farmers had been further impaired by higher freight rates, either many farmers would have been driven from the land or a much greater percentage of their debts would have had to be written off.

It is true that since 1939, due to better crops and better prices, the financial position of Western farmers has been greatly improved. However, anyone familiar with the history of Western Canada knows that in comparatively large areas periods of drought conditions, extending over several years, do recur as well as periods of low prices. The unrest which inevitably occurs in such periods will undoubtedly be aggravated if producers of grain must bear a larger deduction from their returns because of considerable increased grain rates.

13. It may well be largely true that in respect to





the majority of freight costs, the incidence is, as Canadian Pacific says on Page 55, upon the economy as a whole. To the extent that this is so, freight costs are indirect, and an increase might be described as an indirect levy. In respect, however, of the export grain rates in question, the incidence, as already stated, is upon the producer. Any increase in them would constitute a direct levy, not only paid by the producer but one of which he would be acutely conscious every time he received a settlement for his grain. There is no fact better known to the Western grain producer than the freight rate on grain from his shipping point. Probably no parallel situation exists in respect to any other freight rates in Canada.

14. This concludes our direct submission in support of continued statutory regulation of grain rates and incidentally our reply to the argument of Canadian Pacific, at Page 188, that "in fairness and equity these rates should be regulated in the same way and by the same tribunal as rates on other traffic."

To abandon the principle of statutory regulation, and to put Western export grain rates under the jurisdiction of the Board of Transport Commissioners would be to leave the Western farmer defenceless against demands for higher freight rates. He could not plead before that body the need for a national agricultural policy to sustain grain growing in the Western Provinces. To do so would be vain if Parliament had abandoned its long continued national policy in that respect.

The Board of Transport Commissioners is a body charged with the duty of administering and not of



framing national policies. It can only be assumed that, if the present statutory regulation of grain rates is abandoned, higher freight rates would be imposed.

We can now turn to what Canadian Pacific itself has said for convincing evidence as to why grain rates, instead of being placed under the jurisdiction of the Board of Transport Commissioners, should continue to be the concern of Parliament. On Page 61 it says:

"The principle upon which rates are made today by Canadian railways is that the ceiling for all rates is fixed by the Board of Transport Commissioners in determining the overall level of rates. Below that ceiling the railways are free to set rates which do not result in undue preference or unjust discrimination."

This makes it abundantly clear that the Board of Transport Commissioners, as an administrative body, is not in a position to apply considerations of broad national policy, such as, in the past, have moved Parliament in its dealings with the question of grain freight rates.

15. Having discussed the principle of statutory regulation of these grain rates it might, under other circumstances, have been incumbent upon us to deal with the actual level of the rates. Since, however, your Commission has decided not to investigate as to whether or not the rates are compensatory, we feel we should not attempt to discuss their adequacy or to deal with implications that rates at their present level constitute a subsidy to Western agriculture. As the Chairman stated on December 2, the matter is of a very contentious nature, and we, of course, do not admit that the rates are inadequate. Similarly, we shall not comment upon suggestions made by



other interests to the effect that although the rates presumably should be maintained at present levels, the railways should receive a subsidy to enable that to be done. There are, however, certain general arguments advanced by Canadian Pacific which we feel both can be answered under your ruling, and should be answered.

16. Canadian Pacific seems to attach some importance, to what might be called the "lapse of time" argument. It is stated as follows on Page 162:

"It seems obvious that if the rates on grain and grain products obtaining in 1899 and subsequently were just and reasonable, they must now be unreasonably low having regard to the increased cost of railway operation and the increase in prices of grain since that time."

And on Page 164 as follows:

"It should be remembered that existing freight rates on export wheat were established at a time when they were considered to be appropriate in relation to a price of wheat of approximately 70 cents per bushel."

It may be true that the existing freight rates were first made effective in 1899, when the price of wheat was approximately 70 cents per bushel, but there is no evidence at all that they were considered just and reasonable at that time or in relation to that price. The Crow's Nest Agreement had been made, and the Act passed, in 1897, when, as Canadian Pacific shows on Page 100 of the Appendix to Part 1 of its Submission, the average price of wheat, instead of being 70 cents per bushel, was 99 cents. The price had previously been higher. To the extent, however, that one-year's price may have been





in the minds of either the Government or Parliament or of the Railway when the pact was made and confirmed, the price was 99 cents and not 70 cents. Far from being considered just and reasonable two years later, grain rates were then under criticism as being unreasonably high. Shortly thereafter, that criticism was to lead to a considerable reduction as a result of the agreement between the Province of Manitoba and the Canadian Northern Railway, as already mentioned in Section 6 hereof.

If "lapse of time" is to be invoked, however, the year of comparison should be neither 1897, when the Crow's Nest rates were agreed upon, nor 1899 when they were first made effective. During that ~~period~~ grain traffic was extremely small in relation to the size it was soon to attain. Comparison should rather be with the period 1922 to 1925, in each of which years Parliament took action to restore or to confirm the rates. In 1922, if Parliament had in mind any range of prices it would have been one averaging well above \$2.00 per bushel, which had prevailed during the period 1916-1921. In 1925, Parliament presumably would have had in mind a price range in the neighborhood of \$1.50 per bushel, such as prevailed during the period 1924-1928. It is quite evident, therefore, that to the extent prices were considered at all, Parliament regarded, both in 1922 and in 1925, a level of grain rates as being just and reasonable in relation to prices which compare favourably with prices now prevailing or which may be anticipated.

As is well known, for the five year period to end on July 31, 1950, Western farmers are being paid on the basis of \$1.75 for their wheat, basis #1 Northern in



store lakehead and Pacific Coast terminals, very much more than they received during the five year period commencing in 1930. No such prices are guaranteed for the future. The International Wheat Agreement, recently signed, provides a maximum basis of \$1.80 per bushel, in terms of Canadian currency of the value in March, 1949. The minimum prices, however, which it provides, commence on a basis of \$1.50 per bushel, and are scaled down annually until a level of \$1.20 per bushel is reached for the crop year 1952-53. In such figures is to be found a consensus among experts of the great countries interested in wheat that present levels of wheat prices will not be maintained.

Freight rates on grain in Western Canada have not been related even approximately to the prices of grain. Controlled as they are by factors such as export demand, world stocks and the competition of other areas, prices of wheat vary greatly over any period of years. In 1932 when wheat fell below an average for the year of 55 cents per bushel, producers on the Prairies paid as high a freight rate as during previous years of prices at \$1.50 or more per bushel. As pointed out in a previous section, the vulnerability of Western agriculture to wide variation in price and to recurring periods of drought is one of the strongest reasons for leaving control of grain rates to Parliament as part and parcel of its national agricultural policy.

17. Canadian Pacific, in its criticism of the Crow's Nest grain rates, lays a good deal of stress upon comparison with grain freight rates prevailing elsewhere, especially in the United States. It has generally been held that rates south of the border, under much different



- (f) Relative general levels of freight rates.
- (g) Relative distances from points of production to water level.
- (h) General differences in the economies of the two countries and in the operating problems of their respective railways.

There are, however, some points of contrast which are generally known and may be stated with reasonable accuracy.

Nowhere else in the world has there been deliberately and purposely developed an export agriculture so handicapped as that of Western Canada by long haul rail transportation to ports where cheap water transportation is available. Development of the great plains of the United States where grain is chiefly grown was not principally based on export. It came about concurrently with, and as a result of the general development of the United States. It was primarily based upon domestic markets where prices are frequently higher than those available for export. It has a population of 150 million to provide directly and indirectly, a domestic market for grain and grain products, as compared with a population of 13 million in Canada. It has a level of national wealth much beyond that of Canada with which to put into effect policies of price support.

So, a glance at the table of wheat prices in Canada and in the United States at Page 100 of Canadian Pacific's Appendix will show that during recent years farmers south of the border have been getting much more for their wheat than have Canadian farmers, a difference more than sufficient to enable them to absorb any difference in freight rates.





Canadian Pacific at Page 168 has called attention to large acreages and production of wheat in the United States during recent years, in spite of higher freight rates there. The large crops have been mainly due to weather conditions. Acreage increases have been mainly due to the high prices prevailing in the United States, and in any event, they have taken place mainly, not in the spring wheat states of the Union, where freight rates have been quoted, but in the winter wheat area farther south. That area is subject to entirely different conditions as to length of rail haul and as to markets.

During recent years, agricultural policy in the United States has been devoted to maintaining farmers' income. For example, instead of allowing that to be restricted by prices set under international agreements, the Government of the United States by loans on grain and by other means, has maintained open market prices at high levels. It meets its obligations under the International Wheat Agreement by subsidizing wheat exports at rates up to 50 cents per bushel. In recent years farmers there have been protected by a program of parity prices such as Canada could probably not support.

Thus, the Government of the United States has been following an agricultural policy appropriate to the circumstances of that country, while, in this country, a national agricultural policy suitable to the circumstances of Canada has been followed.

Canadian Pacific at Page 44 declares that Western Canada has held its population more effectively than the parallel area to the south. This is intended to demonstrate that development in Western Canada over the years has been more satisfying than in the spring



wheat states of the Union. Might it not be said that one reason at least for that fact must be found in the long term national agricultural policy respecting grain freight rates which has prevailed in Canada, and on which the economic structure of Western Canada has largely rested during the past quarter century?

18. By way of summary, our position is that continued Parliamentary control of export grain rates in Western Canada to the lakehead and to the Pacific Coast is necessary. That fact arises from the special nature of the business of growing grain for export and from its relation to the economy of the West and to that of all Canada. There are further important considerations, including the fact that the wheat growing industry is vulnerable to world conditions beyond Canadian control. The grain rates in question are a direct levy upon the farmer which he is incapable of transferring to others. Those rates are not, and cannot be, held down by the influence of competition from other forms of transportation or by the influence of the principle of "what the traffic will bear", both of which are highly important in connection with other freight rates. The development of the grain growing industry and of the Prairies generally has been a matter of continuing national policy. Such policy, first covered by a solemn contract willingly entered into by Canadian Pacific, has been embodied in legislation passed and repeatedly confirmed by Parliament. To abandon statutory control and to place these rates under the jurisdiction of the Board of Transport Commissioners would be to prevent their regulation according to the principles of a national policy which has been the basis of the develop-



ment of Canada for half a century.

We submit, therefore, that your Commission should recommend no change from the present status of the Crow's Nest Pass grain rates.

J.E. BROWNLEE,

PRESIDENT.

UNITED GRAIN GROWERS LIMITED.





APPENDIX I

UNITED GRAIN GROWERS LIMITED

From	**Freight Rates in Cents per 100 :Pounds	
	To Fort William Port Arthur	To Vancouver
Winnipeg	14	
Portage la Prairie, Emerson,		
High Bluff, Selkirk	15	
Brandon	16	
Rapid City	17	
Deloraine, Virden, Miniota,		
Russell	18	
Estevan, Indian Head, Yorkton,	19	
Regina	20	
Humboldt, Assiniboia, Semans	21	
Saskatoon, Asquith, Melfort	22	
Biggar, Prince Albert, Rosetown,		
Maple Creek, Duck Lake	23	
*Medicine Hat, Lloydminster,		
*Manyberries	24	23
*Dulwich	24	24
*Lethbridge	25	22
*Cecil	25	23
*Hardisty	25	24
*Calgary, Edmonton	26	20
*Drumheller, Stettler, Vegreville	26	22
*Camrose	26	21
*Red Deer	27	22
*Westlock	28	22
*Athabaska	29	22
*Saulteaux	30	24 $\frac{1}{2}$
*Faust	31	25
*High Prairie	32	25
*Springburn	33	26
*Grimshaw	34	26
*Fairview	35	26
*Dimsdale	36	28
*Demmitt	37	29
*Lymburn	37	29
*Pouce Coupe, Dawson Creek	38	30

\*While most of the wheat from Alberta points is shipped by way of Vancouver, other grains from Alberta are mainly shipped through lakehead terminals.

\*\*Freight rates on flaxseed are higher by 1 $\frac{1}{2}$  cents per 100 lbs. than on other grains and grain products.



MR. STEER: Then I propose, again with the approval of the Commission, to ask Mr. Brownlee to give in summary form the contents of the Brief and to comment on one or two other matters which have been raised in the evidence which has been given here.

THE CHAIRMAN: All right.

MR. STEER: Q. Is it your view and the view of your organization, Mr. Brownlee, that after Confederation in Canada a national policy with respect to agriculture was developed?

A. Yes, definitely so. Part of the purpose of Confederation itself, carried partly into effect by its railway policy, including the Crow's Nest railway agreement, continued with a strong and vigorous immigration policy of bringing farmers on to the land; and we say that the present Statutory regulation of grain has consistently been part and parcel of the Dominion policy with respect to land settlement and the development and promotion of agriculture in the west.

Q. And that grain farming (that was the objective of the policy) would find its market where?

A. Overseas.

Q. Overseas and overseas only, obviously.

A. The greater part of it, yes.

Q. Then in addition to this Crow's Nest rate policy, you have spoken of immigration and land settlement and railway construction as other aspects of this policy?

A. Yes, sir.

Q. What do you say was the result of the application of the policy to the west?



A. Well, a very large immigration in the west in the early part of this century, very extensive land settlement resulting in some 250,000 farmers now on the land with a capital investment of some \$2½ billion; and that land settlement, the result both of policies of the Dominion Government and also an aggressive colonization policy of the Canadian Pacific Railway Company, which resulted in the settlement of much of their land.

Q. Would you refer to the Canadian Pacific Brief at page 48?

MR. SINCLAIR: Part I, Mr. Steer?

MR. STEER: Part I, yes.

Q. Page 48, the last full paragraph on that page refers to the Maritime Freight Rates Act, and I refer you to the very last sentence of the last full paragraph:-

"In short, there are now vested interests in this plan on which there probably depend some employment and some return on investments, both of which might easily be destroyed by abolishing or drastically altering the system. This would seem to be an adequate reason for maintaining it for the present."

Would you care to compare that Maritime situation with the Western situation from the point of view that you have just been discussing?

A. Well, I would like to make it clear first of all that the Maritime freight case is admittedly something different from the Crow's Nest Railway rates, and we are making no comment whatsoever upon the policy of the Maritime Freight Rates set-up. All we say is this, that if anybody has obtained a vested interest in a railway





policy and in the set-up of railway rates, 250,000 farmers of Western Canada with an investment of \$2½ billion have that vested interest, and that the argument which is raised in one place should apply equally in another.

Q. Yes, that vested interest that you speak of is a vested interest, as I understand it, in having the freight rates in Western Canada under the control of Parliament.

A. Under the control of Parliament, yes.

Q. And not under the control of an administrative board?

A. Yes.

Q. Now, does that involve any want of confidence in the farmer of the West in such an administrative board?

A. Well, in my opinion, no, not necessarily so. The farmer of the West simply believes that the functions of the Board of Transport Commissioners are limited, and that it cannot possibly have regard to all of the factors which we think over the past fifty years have influenced Parliament in keeping and maintaining the Crow's Nest Pass rate.

We believe that Western Canada agriculturally has not yet developed to the point where Government planning in a very wide sense (far beyond what the Board of Transport Commissioners could contemplate) is still necessary, and for that reason we believe that, as has existed in the past, Crow's Nest rates should remain under the control of Parliament.

Q. Now, would you care to give us some of the reasons why the farmer thinks that Government planning



is still necessary and why these rates should continue under the control of Parliament?

THE CHAIRMAN: Now, Mr. Steer, before we hear Mr. Brownlee, we will take a few minutes recess.

MR. STEER: Yes, my lord.

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(Page 19571 follows)



MR STEER: Q. I had asked you, Mr. Brownlee, if you would give to the Commission the views of the western farmer as to why he thinks these rates ought to be retained under the control of Parliament?

A. I will try to state them very briefly.

In the first place, I think there are no other areas devoted primarily to grain growing so extensive in character and so far removed from the points in store at which grain must be placed for purposes of sale, suffering so widely in differences of fertility, climatic conditions, and where no other of the well-known methods of competition to rail movement have much effect. The farmer, for example, could not possibly truck his grain to Fort William or to Vancouver, and, notwithstanding what was said a while ago, we have in the west for that form of delivery no water competition.

In some over fifty years there have only been a little over half where the price of grain has been over \$1.00 a bushel Fort William. If you look back over twenty years you will find that the number of years in which the price of grain has been over \$1.00 a bushel is a very low number. Therefore you cannot take the income of any one year as a guiding or controlling factor in estimating the well-being of the farmer.

We say, too, in one page in our brief, that even the principle of which the railways speak sometimes, what the traffic will bear, does not apply to the farmer on the land, for the simple reason that he has to sell his product, he has to sell it at whatever the world price is, and he has to sell it regardless of the cost of getting it to market, unless you get right down to a price which might prove to be so disastrous to him that he would sit back and say, "Well, if I have got to lose anyway, I may





as well lose by not delivering."

Q. What is your view as to the incidence -- we are now talking about an area where grain is produced for export?

A. Yes, sir.

Q. What is your view as to the incidence of an increased freight rate on such an area?

A. Well, we agree completely with what my good friend Mr. Wesson said this morning or yesterday afternoon, that is, that the western farmer must get his grain to one of the storage points, offering points, at either Vancouver or the lakehead. The whole structure of the grain business in Western Canada over fifty years has been built up, in our opinion, on that principle, that the farmer gets his grain at his own cost to either one of two places, the lakehead or Vancouver.

Now, I brought with me, for example, the method in which we buy grain at the present time in our country elevators. I have two cards here, one for Alberta and one for Manitoba and Saskatchewan. These cards are made up for us by the Canadian Wheat Board, and they show on the basis of \$1.75, which is the basic price this year, the different grades of grain, the standard grades first and then those that are below standard, the different freight zones -- this card showing the freight zones in Manitoba and Saskatchewan, and this one in Alberta -- and the amount which we are permitted to pay as agent for the Wheat Board to the farmer in each of those zones.

For example, No. 1 Northern on the basis of \$1.75 -- I may say that the handling charge is also deducted -- we pay in the 14¢ zone \$1.62, in the 15¢ zone \$1.61 and a small fraction, in the 20¢ zone \$1.58, and in the 25¢ zone \$1.55; in Alberta in the 30¢ zone \$1.52.



Now, those are the payments which we actually make, which shows that the farther a man is from the point of delivery the higher is his freight rate.

MR STEER: Could we file these, my lord?

THE CHAIRMAN: Yes. How would you describe them? What is the heading to them?

THE WITNESS: Wheat Board Price List, my lord.

---EXHIBIT 263: Filed by      Wheat Board Price  
                                 Mr. Steer      List - two cards, one  
                                                      for Alberta, one for  
                                                      Manitoba and Saskat-  
                                                      chewan.

THE WITNESS: We can have more of those, I think, sent down. We get them from the Wheat Board; I fancy we can get more if it is desired.

MR STEER: Q. It follows, then, Mr. Brownlee, from what you have said, that the farmer at the more distant point from Fort William receives less for his grain than he does at the nearer point to Fort William?

A. I think that is clear, yes.

Q. It is clear from the exhibit?

A. Yes.

Q. When that grain comes to be sold in the terminal elevator it must command the same price no matter where it originated?

A. Quite. For example, there is no No. 1 Northern wheat Regina, no No. 1 Northern wheat Saskatoon. Grain is sold No. 1 Northern at Fort William or Vancouver, and there is no difference at all. In fact, the purchaser in my opinion has no interest whatever in where that grain came from; he acts on the supposition that the grain is there in store to be loaded on boat when he wants it.

Q. Now, if the Canadian freight rate should be increased, can that cause an increase in the Fort William price?



A. You mean an increase in the Canadian rates?

Q. In the Canadian freight rate.

A. I express the opinion of our organization, that it would have no effect whatsoever so far as increasing the cost. In other words, the farmer pays the price to the point where his grain is offered for sale.

Q. Would you care to express an opinion as to whether there are conditions under which an increase in freight rate might result in higher prices for export wheat?

A. Well, we offer no opinion at all as to what happens after the grain is at the store point. Conceivably the cost of transporting grain from the in-store point may have some effect on price in Liverpool. We would think ourselves that unless there was some much wider change in the freight rate structure than one simply local to one producing country, it would have no effect. For example, if you had water transportation costs universally increased so that from Vancouver, Buenos Ayres and other places there was a general increase, then we would say that that would have an effect on price to the ultimate consumer; but we do not think that any change locally in one country, such as increasing freight rates to Vancouver or to Fort William, would have any effect on price.

Q. Now, you have heard the opinion expressed here and have read it in the evidence, that under all circumstances the consumer pays the freight, and you have heard another expression of opinion to the effect that under all circumstances the producer pays the freight. From what you have told me I understand your position is between the two; you say that if there is an increase in freight rate over so small a portion of the world supply as the Canadian area, that cannot have any effect on the world price at shipping points?





A. That is our view, yes.

THE CHAIRMAN: Q. Does that mean, Mr. Brownlee, that your view is that in so far as the carriage in Canada is concerned the freight rate is paid by the shipper?

A. Yes.

Q. In so far as the carriage from then onward is concerned, it is paid by somebody else?

A. Well, in so far as the carriage from there on is concerned, we think there are many factors entering into it, and at one time it might be a part of the price and at another time it might not; but the Canadian farmer in my opinion is interested up to the point of his delivery, and there may be other factors, quite other factors, entering into the question of the freight from there on.

Q. He takes his price at that point minus the carriage?

A. Minus the carriage, yes, sir.

THE CHAIRMAN: I see. All right, Mr. Steer.

MR STEER: Q. The statement is made that the consumer in his price pays the cost of production, including transportation costs.

THE CHAIRMAN: Would you put it again?

MR STEER: Q. The statement is made that the consumer in his price pays all costs of production, including transportation costs. I would like you to comment on that, Mr. Brownlee, if you will, from the point of view of what happened in the west in the depression years?

A. Well, I am pretty reluctant, of course, to set my view up against views of outstanding economists, but it seems to me that a statement to the effect that, 'transportation costs must be part of price paid by the consumer fails to take into consideration the peculiar position of the farmer back on the land. His costs cannot be mathe-



matically figured. It rests first of all upon what his standard of living is going to be, what you are going to agree is going to be his standard of living, and it seems to me that it is entirely a question of what the price range is. There may be times when we can say that the price is such that the farmer does get back the various factors and that there is enough left to give him a reasonable standard of remuneration for his own work and labour. On the other hand, I think that there are many, many times, and probably going back over fifty years the greater part of that time, when I do not think that that applied. For example, I would find it very difficult, looking back at what we faced in the thirties in Western Canada, I would find it very difficult to understand why there could have been such a tremendous problem of debt load built up over six or seven years in the thirties, if you had that principle applying, that the producer was getting back his cost of production plus a reasonable standard of living. And unfortunately some of us had quite a bit to do with government policies in trying to work out that problem of debt adjustment. In short, I say that, having regard to Western Canada as it is today, as it is from year to year, the price range that prevails from year to year, I cannot accept the statement, unless on a very, very long-range viewpoint, that the farmer does get back all the costs of production plus a reasonable wage for himself.

Q. Then would you give to the Commission your views on the contract element in this Crow's Nest rate structure?

A. Without going into any legal argument, our view is the same as that expressed by others who appeared before the Commission. We say that the present Crow's Nest rates had their origin in an agreement. It is our view that that agreement is still binding, that it has not been



terminated, and that it cannot be considered as terminated until Parliament has spoken. Besides that, as I pointed out a while ago, we think that there is a tremendously heavy onus of proof upon the railway companies in asking to have any change in government control of freight rates, first because of the agreement and the benefits received, and secondly because of the extent to which they themselves joined with the Dominion and the Dominion 'joined with them in putting farmers on the land on the basis of the Crow's Nest Pass set-up.

Q. You heard Mr. Wesson's evidence yesterday as to his personal experience?

A. Yes; and there are a lot of Jack Wessons in Western Canada.

Q. Then at page 168 of the Canadian Pacific brief, Part I, there is a section there that puts forward an argument based on lapse of time. Would you give the Commission the benefit of your views on that?

A. Well, our brief tries to set this out, summing up as briefly as I can, that in the first place there is no evidence whatsoever that the rates established in 1897 or 1898 had any relationship to the price of grain at that time.

THE CHAIRMAN: Pardon me. Where is this to be found on page 168?

MR STEER: Page 168, the first complete paragraph and following, my lord:

"Canadian Pacific does not suggest that freight rates should follow ordinary fluctuations in commodity prices."

And then they go on to point out that 70¢ was the price back in 1899, and that at a later date the price in 1949 was \$1.75 a bushel, 150 per cent above the 1899 price, yet the freight rates remain at the 1899 level.



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Q. Now, Mr. Brownlee, you say in the first place that there is no evidence that there was any relationship whatever between the prices of grain and the rates established in 1897?

A. That is my view, yes. Secondly, that up to 1918 grain was carried at less than those rates.

Q. That appears clear from the evidence here with respect to what happened in Manitoba?

A. Yes. And thirdly, that the agreement was again before Parliament in 1903, 1919, 1922, and again in 1925, when at some times the price of grain was away beyond what it is today.

THE CHAIRMAN: Q. You mean higher?

A. Higher, yes.

MR STEER: Q. The price in 1925, for example, the last time this matter was before Parliament, would be what?

A. I am not so sure of 1925, but I think in 1922, when the Crow's Nest rates were re-established, that the price of grain was well over \$2.00 per bushel. We say on page 15 of our brief:

"In 1922, if Parliament had in mind any range of prices it would have been one averaging well above \$2.00 per bushel, which had prevailed during the period 1916-1921."

In 1925 the price was around \$1.50 a bushel.

Q. Then you heard what Mr. Wesson had to say yesterday with regard to the attitude of the farmer in the 1930's, when he was getting very low prices for his grain?

A. Yes. There was no suggestion back in the thirties that freight rates should be reduced. They were not reduced, in spite of the very low prices that prevailed, and I do not think the railway companies themselves would agree to such a control as would have the rates reviewed



from year to year on the basis of price. Probably I should point out, as Mr. Wesson did, that at the present time the price of grain anyway is controlled by the International Wheat Agreement, and remains in full force and effect for four years.

Q. And appears to be on a---

A. On a declining basis. In other words, if we can look at the International Wheat Agreement at all as evidencing the outlook which the framers of that document had in mind, they contemplated a declining market over the next four years, because of the lowered minimum, minimum rate, that was introduced, starting at \$1.50, to \$1.40, \$1.30, \$1.20.

Q. Then there was some evidence given by Mr. Jefferson, commencing at page 15185 of the record, in which a comparison is made between grain freight rates in the United States and those prevailing in Canada. Would you give the Commission your views on the validity of any such comparison?

A. What we have tried to say in our brief, I think, can be stated briefly as follows:

First of all, I think it is quite an accepted principle in Canadian rate-making that you cannot look at the United States unless you can show that the conditions are absolutely on all fours. Now, we say that before any conclusion at all should be drawn between the United States rates and Canadian rates, there would have to be a very wide and exhaustive study into a great many factors, such as the extent to which population in the United States creates a home market, which we have not here; the extent to which the great wealth of the United States gives them the power to put into effect agricultural policies to sustain prices, which we have not here; the relative



importance of grain export to the national economy in the United States as compared with Canada; the price structure; the relative productions of spring and winter wheat; the relative general levels of freight rates and relative distances of production to water level. In other words, we protest against the use of any comparison with respect to rates unless all of those factors are first considered, which would mean a very long and a very exhaustive study.

MR SINCLAIR: I am sorry to interrupt, Mr. Steer, but are those reasons that Mr. Brownlee just gave the same reasons that are on page 17?

THE WITNESS: Yes, they are the same reasons.

MR STEER: Yes, they are. On page 17 of the brief, my lord.

THE WITNESS: Just one other thing, that I believe I gathered from Mr. Jefferson's evidence: That is, that the question of the difference between Canadian and American rates consistently been before Parliament in all its consideration of the Crow's Nest Pass agreement. I believe it was agreed by Mr. Jefferson that back in 1898, taking the Whately distance as comparable with Regina, the rate was greatly in excess of the Regina rate; that it was true again in 1922, when the Crow's Nest Pass rates were re-established; in other words, we say that that same argument or that same situation of difference in rates has prevailed from the time that the Crow's Nest Pass agreement was first established, was first made.

MR STEER: Q. Now, would you give the Commission your views on a question which was raised by Mr. Commissioner Angus on inflation as being in the minds of the people who enacted the Crow's Nest statute in 1897?

A. Well, Mr. Steer, I personally was very greatly interested in the questions which Commissioner Angus





raised. I have forgotten the page on which it is reported. I felt that possibly some comment from one of the farm organizations should be made.

Our view is this, that the Government of Canada has already had to meet two periods of inflation. First there was the period of the First War, and it met that period, it met that problem of inflation, in one way. It did not put any ceiling on prices, and it allowed the Crow's Nest Pass rates for the time being to be increased. After the last War it faced the problem of inflation in quite a different way -- Parliament did, or the Government, whichever you wish to say -- and one of the controlling features I think in the Government policy in relation to inflation was a definite ceiling on agricultural prices, keeping down agricultural prices. For example, in 1943, when the price of grain got to \$1.25 a bushel, the Grain Exchange was closed, and from that time on it is my submission that the production and sale of grain was a definite factor in the Government's plan to control inflation. I think it is pretty generally admitted now by all people that as a result of the ceiling prices, the controls, the farmers of Western Canada have lost a vast amount of money, and I suggest that if at the same time that those controls were on some other board like the Board of Transport Commissioners could have permitted freight rates to go up, there would have been a very unfortunate situation in Western Canada. In other words, what I am suggesting as our viewpoint on that question is that it does not go to the question of where the control is. In fact, we say that where a government has to wrestle with the problem of inflation and has to deal with different factors such as agricultural prices, it should also have control of such matters as railway freight rates. Of .



course, I think that we can say with reasonable accuracy and fairness that the farmer has already, as far as agriculture is concerned, entered the period of deflation; there are much lower prices prevailing today than have prevailed for some little time.

THE CHAIRMAN: Q. What have you in mind when you say much lower prices prevailed? In what?

A. Well, it is only a short time ago that No. 2 wheat, that is, the wheat that was sold outside of Great Britain, was selling as high as \$3.40 per bushel.

Q. You are talking of wheat, then?

A. Yes, of grain. And the same is true of other farm products. With the cancellation of the British contracts I think that there has been a lapse, a falling off in prices of other farm products. In other words, I think we can say that the farmer's income today is not what it was two or three years ago, and that therefore agriculture may be entering the period or may have entered the period of deflation.

MR STEER: Q. Your proposition, then, Mr. Brownlee, is with regard to inflation that at the time of the First War prices were allowed to take their own course, and freight rates were increased accordingly?

A. I do not know that I would say that prices were completely allowed to take their own course, but they were allowed to go much higher. Wheat, for example, I think at one time during or just after the First War went as high as \$4.00 per bushel. Now, in the Second War we know that, as I say, the Grain Exchange was closed definitely when wheat got to \$1.25, we know there were controls subsequent to that, and we know that under the British Wheat Agreement for two years wheat was sold below \$2.00 a bushel, and in the last two years at \$2.00 a bushel, which was considerably less





than what could be considered the world price, and the farmer has lost. I think it would be unfortunate if at the same time another board dealing with another phase of the farmer's agricultural problem could have permitted freight rates to increase. In other words, I am simply trying to suggest what was put in a very excellent way by other witnesses, that we still in Canada must face and will face for some years very difficult problems with respect to farm income, farm prices and farm stability, and that all of the reasons which have caused the Dominion so far to retain its control of freight rates still exist.

Q. Then there is just one other matter on which I will ask you to comment. A couple of instances were given here, one in the grain market in the United States in 1929, and one in the grain market in I think Canada in 1922. These two isolated instances were put forward, as I understand it, for the purpose of establishing the proposition that freight rate increases and decreases are immediately reflected in price. Perhaps you will deal with those two instances?

A. You are referring, of course, to the first instance given, where in Chicago, I think it was in May 1929, the Government announced a decrease in freight rates, and the suggestion was made that that was immediately followed by a fall in prices. Now, I can only give here again a viewpoint that I do not claim to be my own entirely, but one that is the viewpoint of our organization and our grain salesmen, the men who are selling grain all the time.

Dealing with the 1929 situation, my first comment is that anything such as happened there does not happen over night, like a change in the budget, and that the effects of a change are discounted; if they are going to have an effect at all, they would have been discounted long





before the date when the change was put into effect. We say that that decline was not caused by the drop in price itself. It may have been affected somewhat by a psychological attitude on the part of purchasers, which has an effect at times, but we believe that was discounted if there was any such thing there, discounted long before. We think that that was a decline that simply followed the course of the Chicago market at that time, and I have had looked up for me the Chicago price of May wheat. On May 2nd it was \$1.13 a bushel; by May 27th it had fallen almost 15¢ a bushel, or to 98-5/8¢; by May 31st it had fallen to 94-5/8¢. So you have a uniform trend in the market during the whole month of May.

THE CHAIRMAN: Q. When did this decrease in rates occur? What was the date of that?

A. I think the suggestion was, it was on the 28th or 29th -- the 29th of May.

MR STEER: Of 1929.

THE CHAIRMAN: Were we not told that up to that time there had been a rising market? Mr. Sinclair, is that not right?

MR SINCLAIR: Pardon me, my lord?

THE CHAIRMAN: Were we not told by Mr. Armstrong that up to that date the market had been rising?

MR SINCLAIR: I have not got all the figures here -- they are in the transcript -- to show the market trend.

THE CHAIRMAN: Well, Mr. Brownlee has just given us figures to show something different.

MR SINCLAIR: Our figures were given out of the official statistics of the Chicago Board of Trade.

THE CHAIRMAN: There cannot be any mistake about the figures, because there they are; they are easy to obtain.

THE WITNESS: Yes, they are easy to obtain, sir.



MR SINCLAIR: I am having these figures checked.

THE CHAIRMAN: They are important, because we were told that here was a market going upwards, and suddenly it goes down on account of a certain action taken.

MR SINCLAIR: I will have to check this, and cross-examine.

THE CHAIRMAN: Then there is recovery from the action, and it goes up again. Now, Mr. Brownlee says that the market, on the contrary, was going down all the time before then.

MR SINCLAIR: Well, my lord, I do not want to argue this in the middle of Mr. Steer's examination.

THE CHAIRMAN: It is not argument; it is a matter of fact.

MR SINCLAIR: Well, I have not got the figures at hand.

THE WITNESS: These figures were given to me by our Winnipeg salesmen, and there are other factors as to which probably I had better wait until I am questioned by my learned friend, but I would point out too that in the reference which was made on page 18052, there is a reference there to Commissioner Meyer of the I.C.C., and he himself is quoted as saying that that offers no acceptable test of the effectiveness of export rates as part of the rate structure, that they were emergency rates which were put into effect late.

THE CHAIRMAN: Q. Where do you find that?

A. That is at page---

Q. It is in the evidence?

A. Yes.

MR SINCLAIR: Do you think you have properly interpreted that, Mr. Brownlee? I don't want to interrupt you.

MR STEER: Go ahead.



MR SINCLAIR: Q. I just wondered if you had read the whole statement? .

A. I have only read what is in here, and I gathered that in two places that is said. If I am wrong I will be glad to be corrected. There are other reasons which I will hold for the time being as to why we feel that there was a decline in rates at that time, and that this was not just something that resulted from a change in freight rates. Now, when we come to the last incident---

MR STEER: Q. You said a decline in rates; you mean a decline in price?

A. Yes.

Q. The price of wheat?

A. Yes. Now we come to the last one, the one that was mentioned the other day, and again I am simply giving you what has been sent to me by our sales force in Winnipeg. I will state it as follows: I personally do not recall the market of July 1922, but our sales force do point out that it was towards the close of the year. We had marketed a crop of some 300 million bushels.

Q. Toward the close of the crop year?

(Page 19587 follows)





A. 300 million bushels, the close of the crop year. There had been some 300 million bushels harvested and we were facing another crop when 400 million bushels were harvested, which is a very large crop. Again, our information is that there was a steadily declining price for grain which began in June 1922 and extended right through in September. If we take, for example, the October future, in June 1922 the October future had a high of \$1.22 and a low of \$1.14; July, high \$1.22 and low \$1.10; August, high of \$1.11 and low of 95¢; September, a high of \$1.02 and a low of 93¢. In other words you had a declining market due to the large crop that was coming on.

MR. SINCLAIR: Mr. Steer, were you giving cash prices there?

THE WITNESS: I am giving the October future. I will now give you the cash prices, and our information is that the average cash price in May 1922 was \$1.44, in June \$1.33, in July \$1.36, August \$1.18, September \$1.00.

MR. SINCLAIR: You have not got it day by day?

A. No, I did not get it day by day, but I think those figures show that you were in a declining market due to a very large crop coming on. I will go on and say this much further, that the Stanford University wheat studies, which are considered as an authority, have this to say about the period from 1920 to 1922:-

"In the period of deflation which occurred in many countries in 1920-22, almost all commodity prices fell heavily,



more-or-less regardless of the special conditions affecting demand and supply in the usual sense. Wheat prices fell among others. Most of the decline in wheat prices in 1920-22 was due to this fact, not to conditions peculiar to the wheat market.

The second influence...."

(that is, the conditions peculiar to the wheat market)"

"....did affect to some extent the price and purchasing power of wheat. Available supplies increased at a rate faster than the demand. In the earlier post-war period an important factor was the release of stocks tied up in Argentina and Australia through lack of shipping and of Government stocks in European countries."

That is the statement. I have not the page, but this was sent to me by wire. We will get you the page of the reference to the Stanford University wheat studies.

I can only say too that we have been unable to find any reference whatsoever in any of our reports, in any of our papers, or in the Stanford evidence, statistical information in Winnipeg, that the reversion to the price in 1922 had any effect at the time it was put into effect. As a matter of fact the Order-in-Council was passed the month before that, so that it took nobody by surprise anyway.

COMMISSIONER INNIS: Mr. Brownlee, you said something about your general lack of interest in the Maritime Freight Rates Act.

A. I beg your pardon?



Q. You said something about your general lack of interest in the Maritime Freight Rates Act.

A. Now, please don't misunderstand me there. What I intended to infer was that in my reference to it we were not criticizing it at all, and that I was not raising this reference at all for the purpose of discussing it, but only to apply the principle which was set out in the Brief of the Canadian Pacific Railway Company; that because certain industries had obtained the vested interest in a set-up, then it should not be changed although they didn't like it and wouldn't want it extended. Now, we say that just to the same extent there has been a vested interest. - if you can say there is a vested interest at all in freight rates, it has been created in the West.

Q. Well, you are aware that the Maritime Freight Rates Act was to a very important extent based on the argument that the Crow's Nest Pass rates had been applied to the West and consequently there should be a parallel?

A. That may be true. We don't admit of course, for one minute, sir, that there was justice in that claim; neither do we admit that the Crow's Nest rates at the present time are non-compensatory. In fact we say they are compensatory.

Q. Yes, I was not raising that question.

THE CHAIRMAN: All right, Mr. Covert.





EXAMINATION BY MR. COVERT:-

Q. Now, Mr. Brownlee, you seemed this morning, I think, to lay special emphasis on the fact that there is only one form of transportation for wheat, and it seems to me that one of the theories is the monopoly position which the railways hold so far as the transportation of grain is concerned. Is that correct?

A. I would prefer to put it on the basis of lack of competition of other forms of transportation.

Q. Lack of competition?

A. That is one of the theories, yes.

Q. What I wanted to get at is that if they have a monopoly on the movement of grain, that the farmer must move his grain by rail regardless of what the freight may be, that is one of the fears that the farmer in the West has. Is that correct?

A. That is correct, yes. He must move his grain regardless of price and regardless of rate, yes.

Q. And because of this he feels that the Board of Transport Commissioners is in no position to deal with the matter really. If it is left to the railways to make their application for an increase in grain rates, the farmer feels that the Board of Transport Commissioners cannot properly take into account that monopoly position?

A. Well, it is one of many factors. We say that - -

Q. I am not limiting it to that one entirely. I just want to explore that one if I may.

A. We agree that one of the fears of the Western farmer is that if the rates are placed under an administrative board such as the Board of Transport Commissioners,



all of the various factors under which agriculture carries on in the West cannot be looked upon, they cannot take the broad picture. One of the elements is the fact that we have no form of competition to the railways in the West in the local movement of grain.

Q. Now, in your view I suppose, the Canadian National and Canadian Pacific are fairly comparable in that respect, the question of the grain that one hauls as compared with the other?

A. I have not attempted to find figures, but we take it generally speaking, one year after the other, that it is probably 50/50.

Q. And the fact that there are two railways, do you suggest that that makes your position any better?

A. Oh, I presume somewhat better, but they don't serve the same territories at all, and the rates are uniform.

Q. That is what I wanted to find out. As far as the movement of grain is concerned, do the two railways serve comparatively different territories?

A. I think so, yes. I think if you take a map you will find that while in some places their lines are close together and we have elevator points where both lines are at the point, I would think that the map would show that in the wide view there are territories which are rather exclusively served by each line.

Q. Now, I have Exhibit 141 that I wanted to show you, Mr. Brownlee. That is a map showing the Canadian Pacific rail lines in Canada, and I want you to look at the Western provinces of Manitoba and Saskatchewan and



Alberta. Does that indicate fairly well that the Southern part of the Western provinces is pretty well served by the Canadian Pacific?

THE CHAIRMAN: Well, Mr. Covert, we will adjourn now.

---The Commission adjourned at 1:-- p.m., to meet again at 2:45 p.m.

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Ottawa, Ontario,  
Wednesday, March 29, 1950.

AFTERNOON SESSION

THE HON. J. E. BROWNLEE, Recalled.

MR STEER: Before my friend Mr. Covert begins, my lord, Mr. Brownlee promised this morning to give a reference to a quotation which he made from the Stanford Wheat Studies.

THE CHAIRMAN: Would you please speak louder? From where you are it is hard to hear.

MR STEER: Mr. Brownlee promised to give a reference to a quotation which he gave from the Stanford Wheat Studies. It is volume 1, number 1, page 4, publication for December 1924.

EXAMINATION CONT'D BY MR COVERT:

Q. Mr. Brownlee, I showed you this morning, I think, Exhibit 141, but I have Exhibit 9 here, which perhaps is better, and which gives the lines of both railways. I think the ones in red are---

A. C.P.

Q. C.P., and the ones in green are C.N.

MR SINCLAIR: This is a C.N. map?

MR COVERT: Yes.

Q. What I had reference to, Mr. Brownlee, was this, that Mr. Wesson in giving evidence had referred to the monopoly of Southern Alberta and Southern British Columbia, and he said that this was created for the Canadian Pacific by the Canadian Government through the Crow's Nest agreement -- that appears at page 19450, when he was giving his evidence. I was wondering if that was tied up in your thinking too as far as taking the rates out of Parliamentary control was concerned?



A. Well, undoubtedly at the time the Crow's Nest agreement was entered into the Canadian Pacific did get benefits, one of which was the control of a certain territory in Southern British Columbia, one of the benefits. Now, if by your question you are asking me to say whether at the present time my thinking and that of the people I speak for may be influenced by the fact that the Canadian Pacific has an apparent monopoly over quite a large area, I think I would say no. I do not think I could say that. I think it is a wider question today. I think you cannot just point to one thing and say that that is a governing factor in the attitude of the western farmer today.

Q. That is exactly the information that I want, Mr. Brownlee. I wanted to find out if in your opinion that is a governing factor, or if in your opinion it is simply that the rates must at all times be controlled by Parliament regardless of the agreement?

A. Our position is that for a number of reasons, which I tried to state, we say that the rates should stay under the control of Parliament as part of the Crow's Nest arrangement, and, having said that, of course, then we have to carry it to the logical conclusion of being prepared to accept the judgment of Parliament at any time with respect to the agreement.

Q. I really want to find out whether you lay more stress on the agreement itself than you do on, for instance, the wheat economy, the fact that it is a wheat economy. You see, in some parts of your brief you seem to stress the importance of the contract or the agreement; for instance, on page 10 you say that you attach importance to the fact that these rates were first established by agreement. I want to find out just what importance you attach to the fact that it was by agreement?



A. Well, the agreement brought the control of rates under Parliament and started to fix them at a certain rate, and, for a variety of reasons which I tried to state this morning, we say that that should not be changed.

THE CHAIRMAN: Pardon me. I notice on the same page you do say this, talking of the company:

"In addition to a substantial subsidy, it (the company) obtained what has since become an effective railway monopoly in a part of Western Canada where its line has become valuable because of the amount of originating business, particularly in relation to mineral development."

You put it down there as a part of the benefit?

A. Yes; that is part of the benefit which we say they obtained at the time, yes.

Q. Then you go on and say:

"The agreement resulted in grants of lands and mineral rights."

A. Yes.

Q. "In return, the Company agreed to maintain permanently a definite limit to the level of grain rates."

A. And we put that as one of the reasons; we enumerate it as one of the reasons why there should be no disturbance. The railway company entered into the agreement in good faith, the agreement we say is still in existence, they received benefit from it, they acted upon it, and settlers were brought into Canada under it. Now we say that at least there is a tremendous onus on the railway company in attempting to disturb that arrangement.

MR COVERT: Q. The point that I want to bring out, Mr. Brownlee, is this: If you stress importance on the agreement itself and say that they made an agreement, which by its terms provided that these rates would not be





exceeded in perpetuity, and that they should be held to that agreement regardless of what may happen later, that seems to me to be one thing, and it seems to me that if the stress is on the agreement and the fact that it was in perpetuity and they have received consideration, that this enabled them to get this monopoly to which you refer, that it enabled them to get grants of land and mineral rights, then they have received that consideration, and it may be that it should never be touched by Parliament. That is one thing, and I want to find out how far you go in that direction?

A. Well, I think what you are asking me is whether or not I go so far as to say that the rates themselves which were part of the agreement should never be disturbed; is that it?

Q. Yes.

A. Well, I do not think that I am prepared to go that far. What we rest our case on, we say the agreement was made. We presume that any agreement that is made between contracting parties can always be changed. We say that the control of rates should remain with the Parliament of Canada and, having said that, looking to the long future and not knowing what may arise -- questions of inflation such as Commissioner Angus raised, matters of that kind -- we say we have got to leave it to the judgment of Parliament to decide whether at any time in the future and to what extent they might see their way to relieve the company of some of the terms of the agreement for a time, for a short time or for a longer time.

Q. Then on that basis, Mr. Brownlee, could we get down to this, that regardless of the consideration that was paid you say that Parliament, being one of the contracting parties, can come along and change it, and if an emergency



arises, for instance, as Parliament or the Government seemed to think in 1918, then you say that as far as the western farmer is concerned that is all right, Parliament can come along and suspend the operation of the agreement; you have no objections to that?

A. Well, I think that the western farmer would be very, very critical and would examine very carefully the reasons for any suspension such as they made back in 1918, but---

Q. Yes; he would be bound to reserve his right to criticize, but I mean---

A. But so far as our thinking is concerned -- and this is the evidence that I am giving today -- so far as our thinking is concerned, the contract has been made by two parties. Presumably if sufficient reasons are given one party may say to the other, "We don't think it is fair to hold you strictly to this agreement for a short time." We are quite prepared to leave it to the judgment of Parliament, but that is where we want it to be; we do not want it to be any place else.

Q. And you in effect by that, I think, say that the question of whether or not these rates are to be exceeded is not a mere matter of costs of the railways?

A. Not entirely.

Q. In carrying the grain?

A. No.

Q. You say that it is a matter of broad national policy?

A. Correct.

Q. Which only Parliament can decide?

A. Only Parliament should decide.

Q. Only Parliament should decide. Now, could we have from you, Mr. Brownlee, what you think would be the considerations, the things that Parliament should take into



consideration, in determining whether or not the present statute should ever be changed or altered or the rates increased?

A. I do not think I would try to do that, sir. That is asking a difficult question, to anticipate what might arise. Let me make it clear that I am not suggesting that that agreement should be changed readily or quickly. It is an agreement that is acted upon, and farmers have settled in good faith on the strength of it, and I think that only under the most extreme circumstances should it be changed, if changed at all. Now, as to what might come up, I would not attempt for a moment to say the various things that might arise, looking to the long future. Conceivably -- I think it was Commissioner Angus yesterday or the day before suggested an inflation of ten to one or something of that kind. Well, if something of that kind arose, I would expect that Parliament, looking to the good of Canada, as it must do, might say that for a matter of two years or three years again we will not hold the company exactly to these rates.

(Page 19601 follows)





Q. I did not intend to hold you to any specific set of conditions, but I thought perhaps you had in mind, Mr. Brownlee, some things that you feel might be a consideration.

A. Well, I will try to sum it up in this way, and it is as far as I would try to go, if you will excuse me.

Q. Yes, sir.

A. As I say, Parliament is charged with the welfare of the people of Canada. If some matter of extreme national urgency and emergency should develop at any time, I would presume that Parliament then would feel that the interests of the whole of Canada should outweigh the interests of a part, and therefore they would, for the time being--they might relieve the Company of its obligations. But I say that a very heavy onus rests on the railway company in seeking that, and I would say that only in case of real national emergency should the arrangement be interfered with.

THE CHAIRMAN: Well, the specific request made by the railways today is that Parliament hand over the control of these rates to the Board.

A. Well, we oppose that.

Q. And you oppose that. Your position is that you want those rates always to remain under the immediate control of Parliament?

A. Yes, and I think that evidence has been given, even by the Canadian Pacific themselves, that Western agriculture is still in a position where - well, may I put it this way, sir, that I don't suppose there has been a time for a long while when those who are



interested in Western agriculture and prices and so forth are as much worried as they are to-day about what the future, the next few years, has in store for us. Such policies are being considered as floor prices for grain. We have had the International Wheat Agreement, we have had the British Wheat Agreement. Various policies are being considered today. Now, that is part of the farm economy of Western Canada which Parliament is charged to deal with, and we say that this fifty years has remained there as part of that program and that is where it should stay.

MR. COVERT: Q. There is just one other little point about that that I want to deal with. It has been pointed out that the agreement as originally drawn has been in fact changed by Parliament in, I think, two ways. First, dealing with the major change resulting from the decision of the Supreme Court, namely that I think the Supreme Court <sup>held</sup> that it only applied to lines built at the time of the Agreement?

A. Yes, I believe that.

Q. Parliament has changed that, that is one change that Parliament has made. Another change was that the agreement originally applied some, I think, 1913 articles, settlers' effects, and so on. That is another change that Parliament has made in the agreement. Then by order of the Board, I think it was 1927, they made this apply to Pacific coast ports.

A. 1927 yes.

Q. Now, in connection with that latter change, are you aware of the situation with respect to the rate on grain from Calgary to Pacific coast ports?

1. The first part of the paper

is devoted to a general discussion

of the problem and its history.

The second part is devoted to a

detailed study of the case of the

function  $f(x) = x^2$  and its

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A. Well, you mean the mileage, 120 miles or whatever it was?

Q. 124 miles.

A. 124 miles, yes. That was allowed the C.P.R. as part of the base rate.

Q. Do you know the reason behind that?

A. I have not looked it up, no.

Q. Was there any objection to that at the time?

A. I think there may have been at one time, but I haven't heard it for some time. You must remember that during the war the Pacific coast was not an outlet, it was not used a great deal. It is only in the last year, this year, that it has come back into use. I cannot recall for some years that I have heard it discussed very much.

Q. It is not regarded as an important thing from the point of view of the Western farmer?

THE CHAIRMAN: What is your answer? I didn't hear you.

A. I didn't answer my lord, but I was going to say that I am personally not inclined to place major importance on that. I think that there is a broader question.

THE CHAIRMAN: The point is this, that while these rates were extended westwards insofar as the Canadian Pacific Railway is concerned, they are allowed to charge for about 124 miles.

A. 124 miles.

Q. More than the actual distance between Calgary and Vancouver. Is that right, Mr. Sinclair?





MR. SINCLAIR: Yes, they use the Canadian National - -

THE CHAIRMAN: Can you tell us what reason was given for this, if any? Would it be the mountain haul?

MR. SINCLAIR: I can't recollect in the general freight rates investigation - -

THE CHAIRMAN: Perhaps the order of the Board would tell us.

MR. SINCLAIR: I was trying to think what that order was, but I cannot recollect.

THE CHAIRMAN: 124 miles.

MR. O'DONNELL: I think it is paragraph 2 of General Order 448, isn't it?

"The Board orders as follows, namely:

(2) That the rates on grain and flour from prairie points to Vancouver and Prince Rupert for export shall be on the same basis as the rates to Fort William, but in computing such rates, the distance from Calgary to Vancouver via the Canadian Pacific Railway shall be assumed to be the same as from Edmonton to Vancouver via Canadian National Railways, namely 766 miles".

MR. FRAWLEY: I don't think there was anything in the Reasons for Judgment dealing with that point, and I don't know that it was particularly discussed that there was an opportunity to question that. I think it was something that was put in the Order as it finally appeared.



THE CHAIRMAN: It must of course by its application increase the cost of shipping from Calgary to Vancouver by that haul.

MR. FRAWLEY: Oh, yes.

THE CHAIRMAN: By 20%?

MR. FRAWLEY: Your lordship asks whether it was intended to represent the mountain haul.

THE CHAIRMAN: I wondered.

MR. FRAWLEY: One might think so, yes, but of course you know the mountain differential has been removed from all other traffic.

THE CHAIRMAN: Yes, the other differential.

MR. FRAWLEY: And this remained.

THE CHAIRMAN: I was wondering whether the Board had given any reasons.

MR. SINCLAIR: I cannot remember any in the Judgment, my lord. Mr. Jefferson tells me that he does not think there were any reasons given in the Judgment. It may have been, I don't know about this. Mr. Frawley thought that it would have been on account of the haul. It may have been also, rather than anything like that, that they were trying to put Edmonton and Calgary on some kind of parity. That seems to me to be a more logical thing than the view put forward by Mr. Frawley who was grasping at a straw.

MR. FRAWLEY: Well, I could grasp at another straw and suggest that Edmonton could have been reduced to Calgary mileage to put it on a parity.

MR. SINCLAIR: That just shows that the Board recognized that the rate was then too low.

THE WITNESS: If I may just say so, I think



that the reason we have been accustomed to hear is to try and balance off to some extent the two rates through the mountains, one of which was undoubtedly quite a difficult one. At any rate I can only say that we have not had any occasion to look at that for some time because I think last year was the first year since the beginning of the war that it became much of a factor in the grain movement.

MR. COVERT: Q. Now, Mr. Brownlee, I think there are just two other points I want to take up with you. You are of the opinion, I take it, that there is no satisfactory way, as far as the Western farmer is concerned, that protection could be given to him?

THE CHAIRMAN: Would you please repeat that?

MR. COVERT: I said, Mr. Brownlee, I take it, that the Western farmer is satisfied that there is no method of giving him the desired protection, no matter what limits were placed on the Board of Transport Commissioners as far as these rates are concerned. You feel that Parliament is the only body that could deal with it?

A. We don't think it is possible to give the necessary discretion to the Board of Transport Commissioners to deal with the question of Western grain rates, having regard to the interests of agriculture generally. We think it should remain with Parliament as part of Parliament's policy with respect to Western Canada.

Q. You don't think, Mr. Brownlee, for instance, that these rates might perhaps bear some increases if other rates increased? They should always stay as they are?





A. We don't think that the grain rates should necessarily be increased if other freight rates are increased. Again I say that we are prepared to leave it to Parliament as to whether, looking at the economy of Canada as a whole, there might come a set of circumstances that would cause them to temporarily suspend the rates or to make some adjustment. We are prepared to accept that position.

Q. There is one thing certain, I take it, Mr. Brownlee, that you say that the ability of the farmer to afford to pay increased rates should never be used as a guide?

A. I would not even go that far, Mr. Covert, to say that never in the future should the ability of the farmer to pay be a guide for a temporary suspension. Again I say that it is conceivable, that if we had another war in the next two or three years you might have a condition of affairs brought about by that which might affect prices and might be justification for Parliament to do something.

Q. I want to be fair, Mr. Brownlee, but I suppose it is a frank statement to say that the possibility of the western representatives in Parliament voting in<sup>favour</sup> of of taking out the Crow's Nest rates - -

A. Well, if I were a western representative in Parliament today, the thing which I should be very much afraid of is taking a price such as it is today and the conditions such as they are today, as a reason for interfering with the Crow's Nest Pass rates. We have got to look back, we look back over the history of Western Canada. We have seen higher prices than prevail



today, we have seen them before. We saw them in the 1920's, and we know what happened for ten years after that. Today the thing that worries western farmers, those engaged in the grain trade, probably more than anything else is the tremendous stocks of wheat that the United States is holding, how they may use Marshall Aid. We have not the faintest idea what the price of wheat may be next year or the year after. We know that there is still in western Canada, and will be for some years, a demand for national planning for agriculture. And for that reason we again say we want those rates left with Parliament. The question of the level of the rates is another question entirely, but the control of the rates following the concept of the Crow's Nest Pass Agreement, we want to remain with Parliament. We will take our chances so far as the level of the rates is concerned, trusting to the good judgment of Parliament as we have to do.

(Page 19609 follows)



MR COVERT: Q. That is what I was suggesting, that you were perhaps well able to trust Parliament, with the solid block of western representatives, who would be unlikely to vote against a change?

A. I cannot speak for the western representatives, sir.

Q. What I wanted to ask you next was this, Mr. Brownlee: Do you think that a study should be made of the costs to the railways of shipping the grain by the Board of Transport Commissioners, with a view to finding out what the railways' costs were and whether or not they were losing money from the hauling of the grain, with a view to having Parliament determine as to whether or not a subsidy should be paid?

A. Well, quite frankly, we say no at the moment. I do not want to get into any question of the level of the rates, the compensatory nature. The fact remains that I think on the evidence of Mr. Jefferson it is shown that the car earnings, per car earnings, are high, and---

Q. I was trying to avoid a discussion of that.

A. Well, I am trying to avoid it myself, but it seems to me that the responsibility is squarely on the Canadian Pacific, and if they feel---

Q. I do not quite follow you there, Mr. Brownlee.

A. Well, if they feel that the rates are not compensatory, why not go to Parliament and present their case? Why should we be called upon to discuss that now? We do not take away from the railway companies their tribunal; they have a tribunal, they have a tribunal that could investigate rates and reach a decision probably quicker than the Board of Transport Commissioners has recently, and when they reach a decision it is final.

Q. Mr. Brownlee, I was suggesting perhaps that the Board of Transport Commissioners might possibly be in a better posi-





tion to make such a study; I think you would agree that it would be a long study?

A. I do not think they are in any better position than Parliament, sir.

Q. A long study?

A. I do not think, as they are set up at the present time, they are in any better position than Parliament, and in any event if Parliament wants them to do it they can always ask them to do it.

Q. Parliament could ask, the Governor in Council could ask the Board of Transport Commissioners to do it. What I was coming to, Mr. Brownlee, was whether or not you think that the study should be made to find out -- after all, this question has been raised on more than one occasion; do you think that a study should be made to find out whether or not the Crow's Nest rates are compensatory?

A. Well, my answer to that has to be that so far as we have seen the evidence, we see no reason for it. We think that---

Q. You do not think that the determination of whether or not the rates are compensatory is an important matter today?

A. We think the rates are compensatory, and we think that if the C.P.R. feel that they are not, they have a court that they can go to.

Q. That was not my question, Mr. Brownlee.

A. I think that is the only way I could answer that. Certainly we do not feel that there is any need of an investigation today.

Q. You do not think that there is any need of an investigation into the compensatory nature of the grain rates today?

A. Not so far as our studies have gone, no.



Q. You do not think it would serve any useful purpose?

A. I cannot see why it is necessary. They have their court; they can go to it.

Q. I am not thinking, Mr. Brownlee, of whether or not the statute should be changed as far as the effect of grain rates is concerned; what I am thinking of is, supposing that there was a question of a subsidy, if the rates are not compensatory; you do not think it is important that that matter should be determined to decide a matter of that kind?

A. Personally, that is the only answer I can give, sir, that so far as our observation is concerned, we do not think the rates are imperilled at the present time.

THE CHAIRMAN: Q. About the jurisdiction of the Board, you are interested now in these rates as extending westward as well as eastward; that is the fact, is it?

A. You mean to Vancouver?

Q. Yes.

A. Yes, sir.

Q. Well, have we overlooked this fact, that in so far as the westward route is concerned, action to apply them there was taken by the Board, not by Parliament but by the Board, and apparently the Board would have the same jurisdiction today, to undo that or change it in some way or other. Isn't that so?

A. Well, I am bound to say that that is a point I had not considered, sir.

THE CHAIRMAN: I suppose that follows. By order of the Board they were extended westward. Then a similar order might put an end to that extension at any time, so to that extent these rates are now under the jurisdiction of the Board.



MR COVERT: Westward---

THE CHAIRMAN: I mean the westward rates, the westward extension.

THE WITNESS: I suppose under one section it is somewhat questionable as to how far they would get---

THE CHAIRMAN: Q. How far what?

A. I suppose that under -- subsection 6, is it?

MR SINCLAIR: Yes.

THE CHAIRMAN: Well, has that been enacted since? Was it not after the enactment of subsection 6 that the Board made this extension?

MR SINCLAIR: Yes, my lord.

THE CHAIRMAN: You see, subsection 6---

MR SINCLAIR: Is the one that prevents you from raising the agreement as the answer to unjust discrimination. British Columbia, you see, takes the position that they are a wheat port and that they should have wheat in position there to attract ocean shipping, and that if they do not have the same rates westbound to Pacific coast ports for export as they have eastbound to water they are being unjustly discriminated against. If they have a statute---

THE CHAIRMAN: The statutory restriction on the Board refers to the provisions of the agreement made pursuant to chapter 5 of the Statutes of Canada of 1897. Those, of course, applied only to the grain going eastward.

MR SINCLAIR: Yes.

THE CHAIRMAN: And it was after that enactment, I mean after this amendment to the Railway Act -- I think it was 1927, was it not?

MR SINCLAIR: That is right.

THE CHAIRMAN: That the Board made an order extending those same rates westward.

MR SINCLAIR: And the only reason---





THE CHAIRMAN: Now, if the Board did that, then they could undo it now if they wanted to.

MR SINCLAIR: Well, my lord, in my argument I expected to deal with this in what I call the unfair part of that.

THE CHAIRMAN: All right.

MR SINCLAIR: I think I could be of some assistance.

THE CHAIRMAN: I mention it now because it should be borne in mind.

MR SINCLAIR: Yes. I think in dealing with the historical development of this problem we have to deal with that.

COMMISSIONER ANGUS: Q. Mr. Brownlee, when you speak of the possibility of Parliament in certain extreme circumstances suspending the rates for a limited period, had you in mind that during that period the rates would be fixed by the Board or that Parliament itself would name some other rate?

A. If such an emergency arose, sir, I think our answer logically has got to be this: We want the rates controlled by Parliament. We leave it to Parliament to say whether it will deal with them directly through a committee or whether it would ask the Board of Transport Commissioners to make an investigation. I think we would say that they must be left to Parliament to reach its decision, sir.

Q. And taking account of this: Suppose that the Crow's Nest Pass rates were increased at any one time, the other rates which had been 'just and reasonable before because they gave the railways sufficient revenue would cease to be just and reasonable, because they would give the railways too much revenue, so that any action taken by Parliament might have to be followed by an application for a rate revision of other types. I mean, Parliament is only dealing



with one part of the picture, and to complete the transaction you would have to have some Board action as well, wouldn't you?

A. That might be possible; I would not want to say, sir.

Q. It sounds a rather clumsy sort of arrangement.

A. Well, it has continued now for fifty years, and in one period of national emergency, sir, it was acted upon, and I think quite readily and quickly, and I do not think anybody was injured.

MR COVERT: Q. At that time, Mr. Brownlee, that was done, as a matter of fact, on the recommendation of the Board of Transport Commissioners, was it not?

A. Well, I won't say that I have an intimate knowledge of everything that took place leading to the increase, but I think that there was a reference.

Q. My recollection was that the Chairman of the Board wrote to the Government and told them that they were in a hopeless position.

A. I do not know whether that is the case or not.

Q. Now, the last thing I want to deal with: There was some reference, I think, made this morning by you, Mr. Brownlee, to the Maritime Freight Rates Act, and I wanted to call to your attention that under that Act they have a provision whereby certain rates are 20 per cent below rates that were fixed at a given time, and then they bear any increases that follow in later years. Now, I wondered if something like that would not be perhaps a similar position to what took place here; you do not think so?

A. We don't ask for that.

Q. I beg your pardon?

A. We don't want that.

Q. You don't want that. That is all, thank you.



THE CHAIRMAN: Mr. Sinclair.

CROSS-EXAMINED BY MR SINCLAIR:

Q. Mr. Brownlee, I think in your evidence this morning you said in answer to your counsel that there were lots of Jack Wessons in Western Canada, and I was just wondering if that is an absolutely correct statement, after meeting Mr. Wesson?

THE CHAIRMAN: Is that good news for you?

MR SINCLAIR: Q. After meeting Mr. Wesson, I just wonder if they didn't break the mould after that?

A. Well, they produced a very good sample, sir.

Q. Now, the U.G.G. have 625 elevators, country elevators, in Western Canada; is that correct?

A. Approximately, yes. There may be two or three -- I gave the figure 625, and it may be 627 or 628, but approximately 625.

Q. I do not know, Mr. Brownlee, if you can give me this information, but you may be able to; if you cannot give it to me definitely you may give it to me in general terms. I have before you now Exhibit 158 in these proceedings. That is a map of the Canadian Pacific Railway. The heavy black line shows the lines in existence at the time of the agreement, that is 1897, and it shows a total mileage in Western Canada of 3,710 miles on which the Crow's Nest rates were applicable, but that is giving more than the statute required in that statement, because they were only applicable to existing shipping points. Leaving that part aside for a moment, I would ask you to take a look at these mileages: 3,710 miles in the year 1897, and today we have about 24,000 miles of railway in Western Canada to which these rates are applicable. I would ask you if you could tell me how many of the 625 country elevators of the U.G.G.---





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Mr. Brownlee, cr-ex.

MR MACPHERSON: Is that number correct, 24,000, Mr. Sinclair? I think surely that is an error.

MR SINCLAIR: 11,000 on the Canadian Pacific, 11,000 on the Canadian National, and 9,000-odd on the Northern Alberta -- 24,000 as against 3,000-odd.

Q. Could you tell me, Mr. Brownlee?

A. Oh, I would not attempt to say that, Mr. Sinclair, if you don't mind. I would have to go over that map very, very carefully and see if I could remember the points at which we have -- I would not want to say whether it is a quarter or whether it would be a third or what it would be.

Q. Well, you have elevators on other than the main line of the Canadian Pacific?

A. Yes, I will agree to that.

Q. And you have considerable elevators on other branches than the Pasqua-North Portal Branch, the Regina-Prince Albert line that is now part of the Canadian National, the Estevan Branch, the Reston-Wolseley Branch---

A. There is no doubt about it at all, we have a substantial number of elevators that are not on the lines that are marked in black.

Q. Would the U.G.G. be satisfied, Mr. Brownlee, if the agreement according to its true interpretation was carried out today?

A. Well, Mr. Sinclair, that of course immediately gets us into an argument, a legal argument, as to what the agreement is, doesn't it?

Q. I take it as interpreted by the Supreme Court of Canada.

A. Well, of course, I would differ with that, because I would say that the agreement today is the agreement as Parliament has declared it to be.

Q. I am dealing with the document.

A. So immediately you and I would be into a legal



argument, and I do not think we would get anywhere.

Q. Well, let me put it this way, Mr. Brownlee: Taking the document that was executed---

THE CHAIRMAN: It is an exhibit in this case, isn't it?

MR SINCLAIR: I have it here, sir. I have not got the exhibit copy, but I have a copy of my own.

Q. Taking the document that was executed on the 6th of September, 1897, the execution under seal by the Acting Minister of Railways and Canals, L. K. Jones, Secretary; the Canadian Pacific Railway Company, W. C. VanHorne, President, A.R.G. Howard, Acting Secretary -- taking that document, which is Exhibit 261 in these proceedings, would the U.G.G. be satisfied if that agreement as interpreted by the Supreme Court of Canada was what governed the movement of grain in Western Canada?

A. I will go this far, and say that we would not be satisfied to have the movement of grain governed according to the lines in the document which was originally signed. I still would say that we will argue that Parliament, as it has a right to do, has amended the agreement, and that the agreement stands as it is today.

Q. Well, I won't argue about whether---

A. No; I say that is a legal argument on which you and I would not agree.

Q. That is right; but the agreement in its original terms would not be satisfactory, the agreement in the 1897 terms without amendment?

A. Would not be satisfied to have it apply only to the lines set out in the original document, no.

Q. Mr. Brownlee, would you agree that the wheat acreage in the Argentine and Australia and the United States is, as in Canada, pretty well developed, that there is not much room



for expansion?

A. I do not think that I would attempt to answer that, Mr. Sinclair. I do not know enough about those countries. I would not say for a moment that the wheat acreage in Canada is as yet fully developed.

Q. You would disagree with Dr. Britnell on that?

A. I do not remember what Dr. Britnell said, but certainly there are very substantial areas in Northern Alberta that are being brought into production now -- Dawson Creek, for example, today; Dawson Creek will handle this year over  $2\frac{1}{2}$  million bushels of wheat, because of the very large development all around through that area, and the same is true in other areas of the Peace River country.

Q. The wheat acreage in Western Canada has been relatively stable for the last few years?

A. I would say that it has largely reached its development, yes, but I think there is still room for some.

Q. And you would not be prepared to agree with me that the same situation exists in the United States?

A. Oh, I would think so, yes.

Q. And that that same situation exists in the Argentine?

A. Well, I won't speak so positively about the Argentine, but as far as I know, yes.

Q. And the same in Australia?

A. Maybe, yes.

Q. Mr. Brownlee, would you say that the cost of producing wheat to the farmer -- that is, to the time he takes off his crop on the farm -- is higher or lower in Canada as compared to the United States?

THE CHAIRMAN: Pardon me. So I will understand your question, are transportation costs included there in





the cost of production?

MR SINCLAIR: I have taken it at the farm, when he has taken his crop off at the farm.

THE CHAIRMAN: I think one of your witnesses the other day said that you must add the transportation cost to the cost of production.

MR SINCLAIR: Yes; I am just taking this in steps, because otherwise the question gets rather involved, and I think we can make better progress if---

THE CHAIRMAN: So you are leaving out transportation?

MR SINCLAIR: For the time being.

THE WITNESS: I would not want to make a statement on that, Mr. Sinclair, without more thought. For example, there are so many factors that come into it. There is the relative question of taxation, which is very high in some parts of the States, and I would not care to make a statement of that kind without some thought, some study.

MR SINCLAIR: Q. Let us look at the generality of it, Mr. Brownlee, and we will take the basic factors. There is the price of land, taxes, the price of machinery, the price of gasoline, distillate, and the price of labour; those five are the basic ones, I think you would agree. Now, having those five basic factors in mind, I think you would agree with me, would you not, that the price of land is higher in the United States than it is in Canada?

A. I think so, but I would not want to make a statement -- different parts of the United States -- I would think so.

Q. I am talking on the average, Mr. Brownlee. You would not want to agree on the average?

A. I would think it would be higher, yes.

Q. And labour costs I think you would agree, are



higher in the United States; labour costs to the farmer are higher in the United States than they are in Canada on the average?

A. Well, again you get into a question of the relative importance of labour, and I prefer not to make a statement there, sir.

Q. Well, this is one thing we can agree on, I think, that the price of gasoline is cheaper in Western Canada today than it is in Australia?

A. Maybe.

Q. Well, what you are saying to me is, is it, Mr. Brownlee, that you would not agree or disagree with me until you had made a study of that?

A. I won't make a statement of any kind without having a little chance to do some study.

Q. Now, one cost is movement of the crop from the farm to water?

A. Movement from the farm to water; you are speaking now of rail?

Q. Yes. Now, we could agree, could we not, Mr. Brownlee, that that cost in Canada is lower -- I take an average cost again -- than it is in the United States?

A. I think that is true. I do not quarrel, for example, with the mileage figures that are given in the Canadian Pacific brief. What I do say is that those figures should not be judged by themselves in trying to arrive at a policy with respect to freight rates in Canada, particularly where Canada is so dependent upon the export of wheat.

Q. I understand your reservation, Mr. Brownlee; but we can agree that the price on the average for moving the wheat crop to water in Canada is lower than in the United States?



A. Mile for mile I would say that the freight rates are lower in Canada than in the United States on everything, yes.

Q. Let us stick to export wheat.

A. Well, no, I won't stick to export wheat, because there you get into the question of whether or not in the United States the rate is primarily a domestic rate used conveniently for export, quite the contrary to what it is in Canada, where it is primarily an export rate and used conveniently for domestic, and it seems to me that that is one of the things that you have to consider before you get into any comparison of United States rates with Canadian.

Q. Well, they have domestic rates in the United States for local movement, just as we have domestic rates in Canada for local movement?

A. Maybe, maybe.

Q. And then they have their export rates?

A. Maybe.

Q. So I think that reservation, in view of the rate structure, is not sound.

A. Well, I would disagree with that, Mr. Sinclair.

Q. Well, we can argue.

A. I think that the observation I made is sound, and we would press that very, very strongly, that it is not fair to make a comparison of mile for mile rates in Canada and those in the United States without going into many more factors than just the mileage between Whately, say, and Duluth, as compared with Regina and Fort William, on grain.

Q. The American farmer, whether he is on a line, a rail line, that moves to a gulf port, a lake port or a Pacific Coast port, gets a price -- Galveston, Kansas City, Minneapolis -- less freight, just as in Canada the farmer gets a price of Fort William less freight; that is correct,





is it not?

A. No, I would not want to say whether it is or not.

Q. Do you mean by that that you do not know, or you would disagree with the statement?

A. I have not made a sufficient study of the freight rates in the United States and all of the ramifications to be prepared to make any definite statement here. That is our whole contention, that any comparison involves such a wide inquiry that conclusions should not be drawn on just the mileage, comparative mileages.

Q. I am going to ask you to make an assumption with me, Mr. Brownlee -- it is not the one you are expecting. The assumption I am going to ask you to make is that the cost of producing grain in Western Canada has gone up by a dollar a bushel. That is an assumption that I ask you to make with me.

THE CHAIRMAN: Since when, Mr. Sinclair?

MR SINCLAIR: As of tomorrow, we will put it; as of tomorrow the cost has gone up a dollar a bushel, the cost of production, over today's cost.

Q. And the day after tomorrow, Mr. Brownlee, you are going to sit down to negotiate a new agreement with the British Cereal Import Board. Now, do you suggest to me that with all the skill of the U.G.G. as traders they would not get that dollar or a large part of it from the British Cereal Import Board?

A. Now you are assuming -- in the first place, the assumption is one that is so extraordinary that I would not want to try and say what would be done in trying to deal with the Cereal Import Board. It is entirely a---

Q. You mean the dollar is too big? Let us make it fifty cents, then?

A. All right. Now you are assuming that the fifty



cents only applies in Canada?

Q. I am assuming that the cost has gone up of producing Canadian grain fifty cents, yes.

A. I would say that with all of the factors which play upon the price of grain in the foreign market, the United Grain Growers acting in the place of the Wheat Board could not get---

Q. The average exportable wheat crop is 300 million bushels; can we agree on that?

A. Now, I said could not get all of the price; they might get part if it went up that much, but I would doubt it.

Q. How much? Let us have an estimate.

A. I could not say.

Q. You could not say?

A. No, because---

Q. They would get part?

A. ---it seems to me that there are too many factors which enter into the price of wheat over in the old country. Now, mind you, I do not profess, Mr. Sinclair, I do not profess to be a grain salesman. We have our grain salesmen in Winnipeg, and I do not profess to be one, and I can only give you my own opinion for what it is worth.

Q. Well, I would like to have your opinion in these matters.

A. That is our opinion, that the changes in a local area such as Western Canada will not be reflected necessarily in the world price.

Q. But if it went up fifty cents a bushel you, I think, would agree with me---

A. Pardon?

Q. If it went up fifty cents a bushel, the cost of production went up fifty cents a bushel in Canada alone, I think you agree that they could at least get some of it?



A. I am not prepared to make the admission.

Q. Now, the average---

A. I think there are too many factors that would come into play in fixing the world price of wheat.

Q. The average exportable wheat crop is 300 millions, Canadian?

A. The average exportable?

Q. Yes.

A. Oh, I would think that is a little high. That is a little high.

Q. Where would you like to put it? 250?

A. I would say somewhere probably 225, 250; might be 250.

Q. Might be 250?

A. Yes.

Q. You would not want to put it a little higher than that?

A. No, just speaking now from memory. I have not attempted to look up the figures.

Q. Well, that group of bushels, 250 million, has a tremendous effect, I take it, in your view, on establishing the market price?

A. It would have some, yes.

Q. A tremendous effect?

A. It would have quite an effect, yes, play its part.

I was asking about the total exportable grain from different countries. Go ahead.

(Page 19630 follows)





Q. You don't want to change your answer? You said it would have a substantial effect.

A. No, I didn't say it would have a substantial effect; I said it might have some. The trouble is if the price of our wheat went up 25 or 50¢ and we tried to get that out of the price, we would not sell as much wheat. The other countries would step in and take the Canadian market.

Q. Are you suggesting to me that they would expand their acreage?

A. I beg your pardon?

Q. That they would expand their acreage?

A. No, the other countries, the United States in the last three years has very greatly increased its production of wheat.

Q. Would you suggest that that is because it is being paid a subsidy over and above the world price that maybe up to 40 or 50¢ a bushel?

A. I suggest it has been because it has been put in greater acreage and then they have had extremely good crops, yes.

Q. But over the long range of four or five years, and I take that as a long range in the wheat market - you would agree with that, I think, wouldn't you, Mr. Brownlee, for price fixing, four or five years is a long range in the wheat market?

A. Very good, yes.

Q. That the Canadian block of wheat, 250 million bushels, would have a real effect on the world price?

A. It plays its part, yes, but I still say that Canada cannot push up its price over a period of



four or five years without having repercussions, and I still say that the market over in London is based on many factors of which the local price, local freight rate in Western Canada, in my opinion is not one. Mr. Armstrong does not agree, but - -

Q. I think there were quite a few others besides Mr. Armstrong that would not agree.

A. Very good. I am expressing my opinion.

Q. Yes, I quite understand. Now, you would agree with Mr. Wesson - or would you - that you know of no payments under the International Wheat Agreement at less than \$1.98 per bushel?

A. At the moment I don't know of any. We will know better when we get the report of the Canadian Wheat Board.

Q. So that in the crop year 1949-50, the price at Fort William, average price at Fort William, will likely be \$2.00 or a little better. Would that be right?

A. Which? For what?

Q. For all wheat, taking the No. 2 Class wheat at over \$2.00, British Wheat Agreement wheat at \$2.00, and the International Wheat Agreement wheat at \$1.98?

A. Well, this year is the last year of the five-year pool.

Q. That is right.

A. And I certainly don't expect anything like \$2.00 a bushel from the five-year pool.

Q. No, I am talking about this crop year, I said 1949-50 crop year. Would you agree with that

A. That the Wheat Board in selling Canadian wheat



may realize somewhere in the neighborhood of \$2.00?

Q. Yes.

A. Well, that might be. We have got to take into consideration the price at which it is being sold to Great Britain, and all other factors, and I would not want to say that even this year it would be \$2.00. It might be, I don't know, \$1.80 or \$1.85, somewhere around there.

Q. You mentioned this morning the price of \$1.75 under the British Wheat Agreement. Is that price fixed at the initiative of the farmer, Mr. Brownlee?

A. What price is this?

Q. That \$1.75 price that was fixed?

A. Well, the \$1.75 price is the price that is now being advanced by the Canadian Wheat Board under the five-year pool.

Q. I am not talking about that. You mentioned this morning that under the British Wheat Agreement, Canadian wheat had been sold much below the world market price.

A. Yes.

Q. Very substantially?

A. Unquestionably so.

Q. At \$1.75 you mentioned.

A. Well, it was sold at \$1.55 the first two years.

Q. Then we will take the \$1.55 figure. Was that put into effect or was that the figure that was fixed at the initiative of the western farmer?

A. No.

Q. That price was fixed for considerations other





than those of the farmer?

A. That is the price fixed by agreement between the Canadian Government and the British Government as far as I know.

Q. But as a grain trader you would agree that you could not get more than \$1.55 for that wheat?

A. Well, we believe that - now, mind you, to go back and say whether or not that was a wise agreement between the Canadian Government and the British Government is rather a difficult thing to do.

Q. I am not going to ask the question.

A. It involves a lot of questions, and I don't know that I even want to go on record as saying that any particular trader could have got more at that time. We think they could, yes; we think the farmer lost a lot of money because the price was held down. There are some people that disagree with that.

Q. So interference of the Government in the agricultural wheat economy adversely affected the return to the farmer in that instance in the opinion of the United Grain Growers?

A. Yes, we think so. We think the farmer was called upon to bear quite a large part of the burden of controlling inflation, yes.

Q. So when another agreement was made you made it quite certain that the interests of the western farmers would be protected to the extent - -

A. Are you speaking of the International Wheat Agreement?

Q. Yes.

A. Well, Mr. Wesson was there, and he can speak with much more authority than I can with respect to that.



THE CHAIRMAN: Well, Mr. Sinclair, we will take a few minutes off.

---RECESS

---UPON RESUMING

MR. SINCLAIR: Q. In view of the fact, Mr. Brownlee, that I put this question to Mr. Harries and to Mr. Wesson, I think it only fair that I put it to you. Can you tell me how the western farmers would be harmed if the Board of Transport Commissioners on the established principles of rate-making, fix just and reasonable rates for grain; and the farmers, if they needed assistance, secured that assistance from the Dominion Government.

A. Well, it seems to me, that your question, Mr. Sinclair, covers rather a wide range. The question of what is a fair and reasonable rate in relation to whom? To the Canadian Pacific or to the farmer or to whom ?

Q. Can I give you the answer to that? Under the established principles of rate-making, they have to be just and reasonable not only to the railways, but to the shippers. And in that term "shippers" I include consignees.

A. Well, it seems to me that you have got to go a little further than just the question of fair and reasonable rates in dealing with agriculture. In any event your suggestion of a subsidy involves a means test, and I don't see how that could be carried out at all. I think that the worst thing Canada could undertake would be the payment of any subsidy direct



to the producer.

Q. Today, Mr. Brownlee, there is a machinery under the Wheat Board for making settlements with producers up to some years after they have delivered their crop to the elevator.

A. You mean through the Wheat Board?

Q. Yes.

A. But only on the basis of the actual number of bushels they have delivered and the price range that has prevailed.

Q. If the Government established a floor price for wheat, that would be in the nature of a subsidy if wheat went below that figure, wouldn't it?

A. If wheat went below that figure, a floor price would be a guarantee at least that the farmer would get a certain price for his wheat, yes.

Q. And if wheat in Canada was fixed on a parity basis like the United States, that to your thinking, I believe, would be a subsidy too, wouldn't it?

A. Well, the parity program in the United States is designed to give the farmer a minimum price for his grain, yes.

Q. That would be to your mind?

A. In some years, yes, probably a subsidy, but I doubt very much if Canada is in the position to follow the United States in any plans of that kind, for the simple reason that the United States has such a large domestic market for grain that it can do things which Canada cannot possibly do.

Q. Now, the farmers of Western Canada have had to look to the Dominion Government in the past for





assistance. That is correct, isn't it?

A. You mean as part of relief?

Q. Yes.

A. Oh, yes, in the 1930's they looked primarily to the Provincial Government and the Municipality, but the Dominion helped out.

Q. Yes, and they helped out also with Farmers' Creditors arrangements?

A. Not financially.

Q. It relieved the debt load on them, it resulted in relieving their debt load?

A. The Farmers' Creditors arrangements provided for a board of review which relieved farmers of a certain amount of their debt, but there is no financial assistance given under that Act.

Q. No direct?

A. No.

Q. Now, you mentioned this morning, according to my note, that you found it difficult to understand, if the farmer got his full cost of production in the 1930's, that the debt load of the western farmer increased. I suggest to you that - -

A. I think if he got his full cost of production plus a reasonable amount for his labour and time, that I find it difficult to understand how the debt load in western Canada from 1930 to 1937, somewhere in there, became so great.

(Page 19637 follows)

The first part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom. It is shown that the structure of the atom is determined by the laws of quantum mechanics, and that the laws of quantum mechanics are in agreement with the experimental facts. The second part of the paper is devoted to a discussion of the application of the theory of the structure of the atom to the study of the properties of matter. It is shown that the theory of the structure of the atom can be used to explain the properties of matter, and that the properties of matter can be used to test the theory of the structure of the atom.

The third part of the paper is devoted to a discussion of the application of the theory of the structure of the atom to the study of the properties of matter. It is shown that the theory of the structure of the atom can be used to explain the properties of matter, and that the properties of matter can be used to test the theory of the structure of the atom. The fourth part of the paper is devoted to a discussion of the application of the theory of the structure of the atom to the study of the properties of matter. It is shown that the theory of the structure of the atom can be used to explain the properties of matter, and that the properties of matter can be used to test the theory of the structure of the atom.

Q. You would agree with me, Mr. Brownlee, that one of the major factors in increasing that debt load was the fact that there were many farmers who had no crop or had a very, very small crop and lots of them did not get their seed back?

A. In some areas that was the case but the problem was altogether too general to trace it to any one cause on that occasion and to show just what the difficulties and problems are in the case of the City of Edmonton in what we consider to be one of the best farming districts of Alberta as you have in the south or southeast-what you might call the drought area. I know because my office at that time, I suppose, handled more of these cases than any other. I think I can say rather modestly that we handled more cases around the City of Edmonton than probably any one firm did because of our connection with the farm organizations.

Q. But the drought and the fact that the farmers did not get back their seed did substantially increase that debt load?

A. In some areas, yes.

Q. And the fact that they had a lot of machinery notes outstanding -

A. Well, surely the carrying of machinery notes is part of the cost of production which you say they got back?

Q. I am just exploring the statement, Mr. Brownlee. These machinery notes were as a result of purchase by the farmers at a higher price level compared to the time that they became due. Would that be the cause of the increase of the debt load?

A. No, I would not say that. I may be wrong because



I have not - I am bound to say that I have not examined into the relative costs of machinery that might have been purchased in the early 20's with the cost prevailing in the 30's but I will only say that so far as any contact which I had with cost (and I had quite a number) I never came to that conclusion that that was one of the factors.

Q. Now, just one other group of questions, Mr. Brownlee and they have to do with the two examples that we were able to find that we say show that a reduction or an increase in the freight rate was taken up in the prices.

Now, you offered this morning certain figures. I am going to deal first with Chicago, if I may. You gave them rather quickly and I don't know if I have them accurately, or if I took my notes exactly as I should have, but if I have not got them correctly I know that you will correct me.

You gave a figure, if I have it correctly, for May 2nd, for Chicago Cash Wheat and I suggest that the figure should be \$1.16 for No. 2 yellow hard?

A. Well, Mr. Sinclair, I think we are talking about two different things. When we come to consider the market trend, we are accustomed to look <sup>ing</sup> at the figures rather than the cash for the simple reason that (I think I am right in this and I think Mr. Wesson probably would bear me out) that when you come to deal with cash, there are many factors entering into the cash market. For example, there are times when No. 1 feed wheat will be at a great premium simply because purchasers want that. So that in grading wheat we think it is unsafe to take the cash trend and try to form an opinion and we prefer to take the futures trend and the prices that I gave you were the futures prices on the Chicago Exchange and now, with your permission,





I wish to give these figures as I now have them.

On May 1st the Chicago price was \$1.12-7/8.

THE CHAIRMAN: What year?

A. 1929, sir.

MR. SINCLAIR: This is futures on what grade?

A. This is futures, that is the deliverable prices in the Chicago market as they are quoted and these are the prices we now have and which, we think, show the trend of the market much better than your cash price.

THE CHAIRMAN: What futures were these?

Q. This was the May futures, sir - \$1.12-7/8, \$1.13, \$1.12, \$1.10, \$1.08, \$1.05, \$1.06, \$1.03, \$1.03, \$1.03, \$1.04, \$1.05, \$1.04. That takes you down to the 15th - \$1.06-7/8, \$1.01-3/4, \$1.03-1/4, \$1.02-1/2, \$1.03, \$1.02-3/4 \$1.01, .98-5/8, .96-3/4, .97, .95-5/8.

Now, our contention is that that shows a steady decline in May 1929 and that you cannot point to any particular day and say that because of something that was done with respect to freight that it affected the price on that day because you had a steady decline <sup>there</sup> through the month.

Q. On what day was this reduction made?

A. May 29th, sir.

MR SINCLAIR: Now, as I understand you, Mr. Brownlee, you are saying that the examples we gave do not offer any evidence of our position because they are cash prices rather than futures prices?

A. We say apparently that - we say that the futures price in our opinion is the better guide and we say in the second place that, having regard to the whole world condition at that time (which I could give you my version of if you wish) and the whole trend of the market from May 1929 down, and this is the temporary bull market



which occurred that followed as a prelude to the deluge which came afterwards - we say that it is most unsafe to try and pick out what has happened on one day and say that it proves one thing or another.

Q. Would you agree that the futures market is a speculative market and, therefore, cannot be used to measure the effect of a rate reduction which would automatically affect the cash price if our position is a correct one?

A. Well, no, I am not prepared to say that that is the case at all. As a matter of fact, I would think that if a change such as you suggest were about to be put into effect that it would show itself on the speculative market very quickly and probably more quickly and be measured more accurately than on the cash market.

Q. So that you disagree with the views of Mr. Armstrong in this case?

A. I have a great respect for Mr. Armstrong but in this one case I am bound to say that we cannot follow his reasoning.

Q. You would agree that looking at the figures that Mr. Armstrong put on the record, that there was a stable market in cash wheat in Chicago for a number of days - quite a few days - as a matter of fact, for some twenty days prior to this reduction taking place and then there was a reduction that took up the amount of the reduction in the wheat?

A. No, I am not prepared to go that far at all. Now, in the first place, you are taking the end of May as the date that you make your estimate.

Now, at the end of May invariably the cash position and the futures position have to come together and it is an unsafe time in any month, in my judgment, to form an opinion

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which is based on the cash sales but what you have to remember is that we were getting into a sick position at that time with respect to wheat. We had finished harvesting the greatest crop up to that time that the world had produced in wheat and then followed the very poor crop of 1929 which brought about a temporary bull market but, because of world conditions generally, it was followed by a complete collapse at the end of 1929 and in early 1930 and in a period of that kind I suggest very strongly that it is most dangerous to take what happened on one day just because there appeared to be a coincidence and to try and draw a conclusion that something that was done with respect to freight rates may have caused a variation that day in the cash position of a particular grade of grain.

Q. Well, you will agree that the same pattern was shown in July in which you had cash wheat prices of 1922?

A. In connection with cash?

Q. Cash wheat, yes.

A. I may have but I still say that it is a coincidence that you cannot and would not dare base a programme of increasing freight rates in Western Canada on.

Q. You would say then that what we had was really a remarkable coincidence. Is that it?

A. Dealing with cash wheat possibly, yes, I may say that if you take the price on the Winnipeg Grain Exchange for the same month you will find exactly the same that I have given you with respect to Chicago; that is, you will find a continual decline for the month of May and on into June.

Q. I do not propose to argue the point with you, Mr. Brownlee.

A. I am simply giving you my opinion, Mr. Sinclair, the best I can.



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Q. I appreciate that. Now, you would agree with me, would you 'not, Mr. Brownlee, that your knowledge of the independent mien of the Western farmer -

A. The independent what?

Q. Mien - outlook of the Western farmer, that he does not want any freight rate that gives him a special advantage to the disadvantage of other people in the country?

A. Well now, Mr. Sinclair, I don't think that is putting the question in a fair way at all. That Western farmer - I have a great respect for the Western farmer. He is as fair-minded as the average man you will meet anywhere but he is carrying on business in a very difficult way and under difficult way and under difficult circumstances and because he asks for certain protection either in price or in freight rates, some special protection, I do not think it should be interpreted as asking for something which other men have not got.

Q. I do not know that that quite meets the question I put to you, Mr. Brownlee?

A. I think that is the only way I can answer it, sir.

Q. Can I try it again and maybe we can take another look at it. I asked you that, having in mind the independent mien of the Western farmer, he would not want a freight rate on grain that gave him special assistance that was paid by other people in the country to their detriment?

A. No, I won't go that far with you. I say that the Western farmer wants a square deal and that so far as freight rates are concerned, he has built up his economy on the basis of reasonable and fair rates to him protected by Parliament and he wants those and if the impact should rest here or there he wants Parliament to be the body who will say that and provide the answer.



Q. Well, am I to take from your answer that the western farmer wants his rates on grain to be fixed on a different basis and <sup>to</sup> involve different principles than are in other rates in Canada?

A. Undoubtedly.

Q. He does? And you think he should look to the railways to carry any burden?

A. Not necessarily. I do not say that and I have not said it from the beginning; our brief does not say it. We say that you have a right to go to Parliament if you feel that you are losing money and that we are prepared so far as the farmer is concerned to rest our case with the Government and whatever the wisdom of the Government decides, we are prepared to abide by it.

Q. Can you tell me this --

A. The Government may meet that situation in different ways. It may say that the railway company should carry a part of it because of the nature of the volume and what it brings indirectly. It may say, if it says anything at all: "We will treat it another way. We will treat it as a subsidy to the railway as a whole," to make up your losses on passenger traffic, for example.

Q. If we have any?

A. Well, your brief very definitely says you have.

Q. In Western Canada.

A. And you want to charge a large part of it up to the farmer.

Q. I think we could make quite an argument on that and I won't get into a discussion on it.

A. I am not trying to be difficult.

Q. Oh, no. Now, Mr. Brownlee, would you agree with this suggestion, that the reason why the western provinces' submission to have grain rates not made part of this inquiry



and the Government's insistence that they should be --

A. Now, will you please give that again; I have not followed you.

Q. That the demand of the western provinces to the Dominion Government that Crow's Nest rates be not made a part of this inquiry and the Dominion Government's insistence that they should be, is evidence of the fact that the Government realizes that---

A. I would rather you would let the provinces answer that, because I am not sufficiently familiar with it.

Q. You would not like to discuss that?

A. I do not know anything about what took place between the provinces and the Dominion and, therefore, I do not want to pass any opinion on it.

Q. Then, would you think that an inquiry into the Crow's Nest Pass rates in Parliament (and I want you to be very frank with me, Mr. Brownlee, in this matter if you can) would be an inquiry into the merits of the question?

A. Why not?

Q. You ask me, "Why not?"

A. Yes.

Q. Could I suggest to you that there is a very deep feeling among the western farmers that these Crow's Nest Pass rates are, to use a phrase that has been used here, a Magna Carta -- something that they cannot get along without, and something that they will not discuss on the merits. Have you ever, Mr. Brownlee, heard a western farmer discuss the Crow's Nest Pass rates on the merits?

A. Well, quite frankly, until the issue was raised in the last few days, I have not heard farmers discuss it at all. It was taken for granted and undoubtedly it is considered by the farmer as one of the conditions





under which he was brought into Western Canada and made his investment in the land and that as a matter of good faith he should be protected.

Q. Would you agree with me, Mr. Brownlee, that in 1921 and 1922 the farmers' organizations made the restoration of the Crow's Nest Pass rates a political issue in Western Canada?

A. In 1922 I have no doubt whatever that the farmers' organizations, realizing the importance of the Crow's Nest rates to western agriculture, did everything they could do to protect it -- yes.

Q. I asked you if you would agree with me that they made it a political issue?

A. I presume they did, yes.

Q. And the U.G.G. would call meetings to discuss the matter?

A. No, the U.G.G. did not call meetings at that time because the U.G.G. preferred to leave that other farmers' organizations -- the noncommercial.

Q. I am sorry -- the U.F.A.?

A. Yes, the United Farmers, I have no doubt.

Q. And that the Crow's Nest rates, every time they are raised in Western Canada, become political issues, is that correct?

A. I have no doubt at all if you mean by "political" that the farmers will do everything they can to hold those rates, yes. Why shouldn't they? You and the Dominion Government brought farmers out and put them on the land on the strength of that agreement. Now, why shouldn't they try to protect it?

MR MACPHERSON: It was an agreement in which there was singular unanimity between parties.

MR SINCLAIR: I was not asking Mr. MacPherson



about it. I know he knows all about politics -- that's for sure.

Now, you would agree with me that the very fact that the Canadian Pacific tried to have this issue discussed on the merits has immediately started political ramifications operating in Western Canada. That is correct, is it not?

A. I will say this, that since the matter has been brought before the Royal Commission, undoubtedly the farm organizations and the farmers themselves have a keen interest in it -- yes.

Q. You won't go further than that?

A. Not at the moment.

Q. Now, you would agree with me, Mr. Brownlee, in this, that the political arena is not noted for a place to secure a judicial review of an issue?

A. Well, no, I am not going to go that far. I have a little higher respect for our governments than to believe that the governments, either Dominion or Provincial, are entirely influenced by politics and I think that on any question affecting the welfare of Canada or any part of Canada a fair and proper solution of a problem can be obtained from the Government.

Q. That is the best answer you can give to me?

A. That is the answer I will give you and it is the best one I can think of at the moment.

Q. Thank you very much, Mr. Brownlee.

RE-EXAMINED BY MR STEER:

Q. There is one question which I should have put to Mr. Brownlee and overlooked, if I may, my lord.

I would like you, if you will, Mr. Brownlee, to discuss the question of the marginal producer and the effect which increased costs of production has had or may be expected



to have upon him?

A. Well, I only would like to make this observation, that I do not think any of us probably fully appreciate the number of marginal or near-marginal producers that there may be in Western Canada in some of the older districts and in some of the new; many a smaller acreage farmer particularly.

THE CHAIRMAN: Are you talking now of the land being marginal?

A. Well, the farmer whose farming operations are what we call marginal or near-marginal.

Q. Why would they be that?

A. Because of what he is able to earn in the production of his land. For instance, a man may have a small acreage. He may be in an area where you have three crops out of ten and there may be various reasons why you may have quite a few farmers who are either at the marginal or near-marginal level and I would be quite fearful that any substantial increase in freight rates would aggravate that problem and might result in quite a difficult social problem in Western Canada and in the farmers being forced off the land.

We faced it once -- we faced it to some extent for other reasons in the southeast part of Alberta in the days when I was in the Government in Edmonton. It is a very difficult problem to have to face and it does seem to me that any substantial increase in freight rates might result in a problem of that kind -- a fairly extensive one.

MR STEER: That is all, thank you.



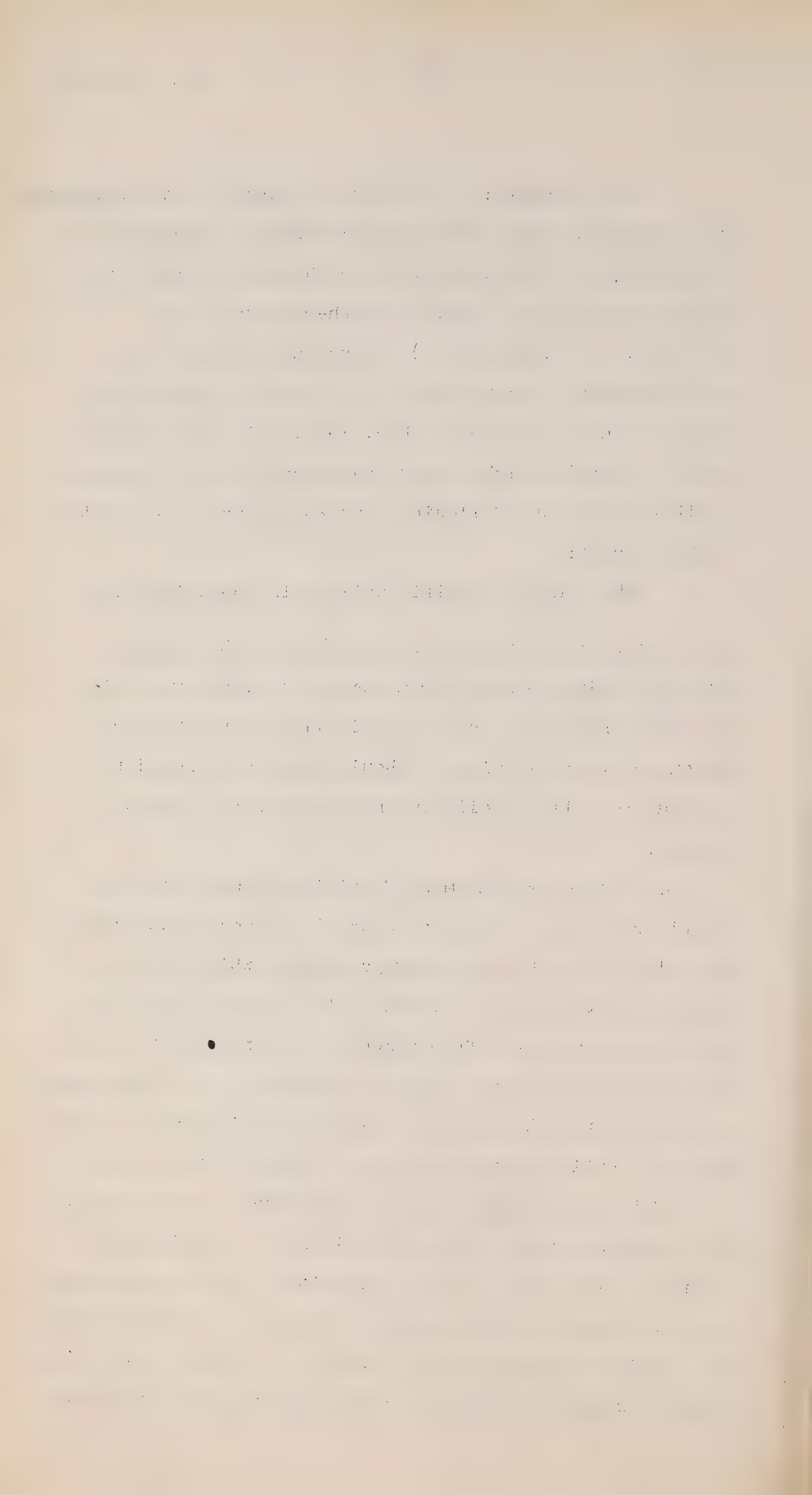


MR O'DONNELL: You asked, my lord, if any explanation were available about this 766 miles between Edmonton and Vancouver, and I was looking in the General Freight Rates Investigation Report and I found there (that is in 17 J.O.R. & R. page 131,) I find there at page 205 the following explanation. It refers to a Board Order 36769 of the 2nd of September, 1925, which was reviewed in the General Freight Rates Investigation and, speaking of that Order, the following remarks appear by one of the Commissioners:

"The Canadian Pacific Railway in computing their their rates under such Order have adopted the Canadian National Railway mileage from Edmonto to Vancouver, viz; 766 miles instead of their actual mileage from Calgary to Vancouver, viz; 642 miles. Should there be allowed to continue to collect tolls on the basis of this assumed mileage?

In looking at the map of British Columbia and the Prairie Provinces, it can be seen at a glance that Edmonton and Calgary are the two gateways through which the traffic moving from the Prairie Provinces to Vancouver must pass. Heretofore, the rates from Edmonton to Vancouver were the same as the rates from Calgary to Vancouver. On that basis, our two great railway systems extended their lines into the prairies, built railway facilities, grain elevators, etc.

If the rates were lowered from Calgary to Vancouver, the Canadian National Railway would lose a considerable amount of its traffic to its competitor, and so railway and grain loading facilities would be rendered useless; or else, the Canadian National Railway, with a view to retaining its traffic, would be obliged to reduce its rates to the basis



of the rates charged by the Canadian Pacific Railway. Then, instead of the Canadian Pacific Railway assuming the mileage of the Canadian National Railway, The Canadian National Railway would assume the mileage of the Canadian Pacific Railway shorter line, . . . entailing a considerable loss of revenue to both railway systems.

Another anomaly would also be created. A shipment of grain via Canadian National Railway to Vancouver, from a point at a given distance east thereof, on account of this reduced mileage, would be carried at a lower cost than a similar shipment to Fort William, from a point the same distance west thereof, thus defeating the avowed purpose of Order 36769 which was to equalize the rate to Fort William and Vancouver on grain and flour for export.

In computing rates on grain and flour to Vancouver for export, the Canadian Pacific Railway should be allowed to continue to assume a mileage of 766 miles, namely, the same as the C.N.R. from Edmonton to Vancouver."

There is another short passage on 132.

THE CHAIRMAN: What is the number of it, you say?

MR O'DONNELL: 36769.

THE CHAIRMAN: When was that made?

MR O'DONNELL: On the 2nd of September, 1925.

THE CHAIRMAN: Have you it here?

MR O'DONNELL: I haven't it here, my lord, but I think in the General Freight Rates Inquiry it is sufficiently summarized.

THE CHAIRMAN: That was still later?

MR O'DONNELL: Yes, this was 1927. This judgment I was reading from was 1st of September, 1927.

THE CHAIRMAN: And is that the result of the General



Investigation?

MR O'DONNELL: Yes, and it is paragraph 2 of General Order 448 which is in this same report, 17 J. O. R. & R. at page 294 which was made accordingly. I read that earlier. It is three or four lines. I will read it again if you wish, my lord, page 295:

"The Board orders as follows, namely:-

2. That the rates on grain and flour from prairie points to Vancouver and Prince Rupert for export shall be on the same basis as the rates to Fort William, but in computing such rates, the distance from Calgary to Vancouver via the Canadian Pacific Railway shall be assumed to be the same as from Edmonton to Vancouver via the Canadian National Railway, namely, 766 miles."

THE CHAIRMAN: Somebody handed me an earlier judgment where the Canadian Pacific Railway already had such a rate in effect on account of the mountain.

MR O'DONNELL: Yes, it ties in with that, my lord. There is reference to it in this judgment but I think it was published on a different basis in the final analysis; it was a matter of equalizing the rates on the two railways.

THE CHAIRMAN: Here is what it says:

"The rates established by the Canadian Pacific Railway on grain and grain products to Vancouver for export, were based on a relationship to the grain rates to Fort William, the basis, roughly (and with some exceptions) being that from its main line and southern branches, rates to Fort William were applied to points of corresponding mileage to Vancouver but with the addition of a constructive mileage for the mountain haul."

The Board says that is why the Canadian Pacific Railway





itself made that exception.

MR O'DONNELL: Well, at page 204 of the General Freight Rates Investigation---

THE CHAIRMAN: And the Board, by that subsequent order, confirmed it.

MR O'DONNELL: That is right, my lord.

THE CHAIRMAN: I suppose at the time it would be on account of the long haul.

MR O'DONNELL: Yes, my lord.

THE CHAIRMAN: Then we will adjourn.

---The Commission adjourned at 4:45 p.m., to meet again at 10:30 a.m. on Thursday, March 30, 1950.



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ROYAL COMMISSION  
ON  
TRANSPORTATION

EVIDENCE HEARD ON

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ROYAL COMMISSION ON TRANSPORTATION

Thursday, March 30, 1950

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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO  
THURSDAY  
MARCH 30, 1950.

THE HONOURABLE W.F.A. TURGEON, K.C., LL.D., - CHAIRMAN  
HAROLD ADAMS INNIS - COMMISSIONER  
HENRY FORBES ANGUS - COMMISSIONER

-----  
G.R. Hunter  
Secretary

P.L. Belcourt  
Asst. Secretary  
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H.C. Friel, K.C.		
K.D.M. Spence	}	Canadian Pacific Railway
I.D. Sinclair		
C.D. Shepard	)	Province of Manitoba
M.A. MacPherson, K.C.	)	Province of Saskatchewan
J.J. Frawley, K.C.	)	Province of Alberta
R.H. Milliken, K.C.	}	Manitoba Pool Elevators, Saskatchewan Co-Operative Producers and Alberta Wheat Pool.
G.H. Steer, K.C.		
	}	United Grain Growers Ltd.; Alberta Federation of Agriculture.
C.W. Clement, K.C.	}	Edmonton and Calgary Chambers of Commerce and the Corporations of Calgary and Edmonton

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- 19652 -

Ottawa, Ontario,  
Thursday, March 30, 1950.

MORNING SESSION

THE CHAIRMAN: All right, Mr. Covert.

MR COVERT: The first submission this morning, Mr. Chairman, is that of the Alberta Federation of Agriculture. The witness is Mr. Roy C. Marler, and I think Mr. Steer is presenting the case for the Federation.

ROY C. MARLER called,

EXAMINATION BY MR G.H. STEER, K.C.:

Q. Mr. Marler, you appear on behalf of the Alberta Federation of Agriculture?

A. Yes.

Q. And that is an Alberta organization of some sixty different agricultural producer organizations?

A. That is correct.

Q. And a brief has been filed on behalf of that body?

A. Yes.

Q. Which I would now ask to have made a part of the record, my lord.

THE WITNESS: The Alberta Federation of Agriculture as stated in our submission on June 13th, 1949, represents sixty different agricultural producer organizations. In that brief we dealt with transportation in relation to Alberta's agriculture. We dealt with the question on a general basis which was supported in greater detail by submissions from a number of our affiliated member bodies interested in specific aspects of our industry.

We did not attempt to deal with the question of grain rates or the Crow's Nest Pass Agreement as there was some question as to whether the Commission would consider these in its study, other than to state, and we quote:



"Bearing in mind the vulnerable position of the grain producer it is not difficult to understand the importance attached to grain rates. The marketing problem of the prairie grain producer cannot be considered a purely sectional matter but is rather one of truly national concern. We do not feel that the marketing of the Western grain crop involves any regional conflict of interest. In fact, it would be true to say that the prosperity of other regions is most intimately connected with the success of that undertaking.

We do not ~~need to~~ point out to this Commission that the ~~Prairie Provinces~~ stand alone in being the only provinces in Canada having any sizeable area of undeveloped arable land. We can also say that we constitute the very foundation in providing surplus food products for not only other provinces of Canada, but also for export to many countries of the world, wheat being, shall we say, king-pin of all Canadian exports. The export of this product plays a very important role in the balance of international trade and may be looked upon as a barometer of the industry and economy of our province.

The development of the arable lands in the prairie provinces during the last 70 years has resulted in Canada being recognized as one of the three major exporting countries of the age and as a result of her food bank of wheat in the early years of World War II her food basket was placed in reach of the peoples of many countries. This and other factors have placed Canada as a nation ranking high in the esteem of these people and able to take a major position in international trade and international affairs generally. These results are indeed commendable. We mention





them for two reasons.

First, to show the important contribution that the soils of the prairies have made to the security and general welfare of the Canadian people. Secondly, to flash a warning that in order to secure this result over the years the major portion of our cultivated acreage has been steadily cropped without any appreciable effort being made to restore the fertility of the soil. A very common phrase today is that "the farmers are mining the soil". Almost a negligible number of acres have had either legumes and grass seeded or manure applied to compensate for the constant drain from successive croppings. In this regard, we might benefit from the experience of France. In that country today the land is more fertile than it was 200 years ago as a result of farming methods of manuring and other forms of restoration.

The main factor contributing to the lack of this type of farming practice is the generally low economic level of the agricultural industry during these three score years and ten of which transportation costs during so-called normal years and depression periods so materially affected the net return of farmers. Therefore we are sure that the many members of parliament representing all areas in Canada, because of their intimate knowledge of these conditions, are in a better position to be trusted with the responsibility of the Crow's Nest Pass Agreement than are the Board of Transport Commissioners.

We need not refer to many of the details as to what has transpired in the past years with regard to the Crow's Nest Pass Agreement and its effect on the grain growers of Western Canada, yes, all Canada.

It has been stated time and again that the



safeguards established under the Crow's Nest Pass Agreement are essential to the welfare of the Prairie Provinces. We would go further and state that they are necessary in the economic interest of Canada.

In support of this statement we quote the Royal Commission on Dominion Provincial Relations reporting in 1939 which, in turn, quotes the Parliamentary Committee which dealt with the same question under Order-in-Council P.C. 886 of 1925:

"The Committee are further of the opinion that as the production and export of grain and flour forms one of the chief assets of the Dominion, and in order to encourage the further development of the great grain growing provinces of the West, on which development the future of Canada in large measure depends, it is desirable that the maximum cost of the transportation of these products should be determined and known, and therefore are of opinion that the maximum established for rates on grain and flour, as at present in force under the Crow's Nest Pass Agreement, should not be exceeded. "

\*

In further support of our position we quote from the same report as follows:

"The economy rested almost completely on wheat . This one crop appeared to justify the large amount of capital borrowed abroad and invested in Western Canada, and it was the chief justification for most of the heavy investments of foreign money in the other sections of the Dominion. The Prairie region provided the principal economic contact of the country with the external world; one-third of Canada's exports out of



which the external debts would have to be serviced consisted of wheat and flour."

\*\*

It may be argued that the scene has changed since this report was compiled. We maintain that conditions today warrant even more than in any time in the past that the authority for grain rates as established in 1897 and reaffirmed in 1925 should not be changed.

The grain crops of the Prairie Provinces are still the major source of income for farmers in these areas. The volume produced has increased many times. This larger volume, the use of larger grain cars and great distances, along with the fact that the producer pays for loading and unloading, make for greater economy of transportation by the railways.

These crops still depend on markets in other provinces and abroad. For a major portion of our exports we must compete with grain producing countries having ready access to sea-board shipping. The volume of grain produced in the Prairie Provinces and in competing countries is subject to violent fluctuations due to factors which are beyond the control of the producer. These uncontrollable factors have a greater influence on grains than on many other agricultural products. This fact can and does affect the returns of the producer and when such conditions are in sway the producer having the higher transportation costs suffers most.

The price factor, with the exception of three short periods in the history of Western Canada, namely World War 1, 1926 - 29 and World War 11, has been of major concerns to the producers. With the exception of these periods the cost of transportation even under the Crow's Nest Pass





Agreement, has been a major factor in determining the net returns to the producer.

We have during the last five years, through the operation of the Canadian Wheat Board and United Kingdom contract, been able to establish a stable price for wheat, and as a result have effected a greater degree of stability in agriculture throughout the width and breadth of Canada than at any time in the past. This has been done during a period of inflated prices but notwithstanding these inflated prices which prevailed on world markets, our prices of export grains in the main were placed under a ceiling as were wages and many phases of the operation of industry. The net result of such action proved to be a most satisfactory way of handling Canada's war effort and the retaining of Canada's economy in a more effective balance for all people of Canada than was possible during the first World War. At that time, as a result of the Government's wartime policy certain releases were granted from the Crow's Nest Pass Agreement which might be properly termed as the incentive in succeeding years for initiative and great enthusiasm for further concessions.

We are now undertaking two major experiments to stabilize the returns for wheat and coarse grains in the years ahead. The success of these efforts will depend on many factors. Should they fail, or should the effective demand for our products become such that the price is materially reduced, we may be faced with the conditions experienced so often in the past when transportation costs took such a large portion of the selling price of grains and other farm commodities that little was left for the living or operating expenses of the farmer. Further, in this respect, the Crow's Nest Pass Agreement offers a permanent



basis relative to transportation costs on which to enter negotiations for markets and long term agreements such as the international wheat agreement. The repeal of the Crow's Nest Agreement would in effect take this degree of permanency out of the considerations and might subject transportation costs to marked fluctuation, from time to time as the Board of Transport Commissioners deemed equitable in regard to transportation costs rather than the consideration being the ability to fulfill long term agreements and compete on foreign markets with other countries having shorter distances to market or short hauls to seaborboard, notwithstanding the fact that it might be in the best interest of Canada's general economy so to do.

The Crow's Nest Pass Act specifically provides for continuance of this Agreement forever. While the agreement was suspended for a few years following World War 1 and while the agreement has been modified to some extent by the withdrawal of rates on certain commodities moving West from Port Arthur, this does not in any manner suggest that the balance of the agreement should be scrapped or that the jurisdiction of these rates should be transferred to any authority other than the Parliament of Canada. Nor does it, through experience resulting therefrom, in our opinion, justify the modifications made.

In our opinion, as a result of studies made, there is no doubt that the parties concerned entered into this agreement with the full understanding of the facts and with appreciation for changes which might take place in future years. To the best of our knowledge, the Agreement was made without circumstances placing either party in a position where they were obligated to sign the

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Articles of Agreement.

The Government was anxious to establish rates and railway lines which would encourage and assist with settlement of the West. They were equally anxious to strengthen their position nationally. Thus, it was felt necessary to prevent the flow of trade north and south with the United States which in the interests of national unity should move within the boundaries of Canada. It was their considered opinion that this trade should move east and west.

Aside from the agricultural picture, they were interested in maintaining in Canada and for Canadians the development of mineral areas in Southern British Columbia.

With these purposes in mind, the Laurier Government saw fit to offer a subsidy for the construction of this line from Lethbridge to Nelson, British Columbia, far in excess of the offer made by the previous Government under Sir Charles Tupper. The proposal made by the Conservative Government included a subsidy of \$5,000. per mile along with a loan of \$20,000. per mile to be paid in 20 years at  $3\frac{1}{2}$  percent. The later proposal, and the one which was acted upon, was for a subsidy of \$11,000. per mile which amounted in total to \$2,404,720.

This major concession which also put the railway in a position to take advantage of large land grants from the British Columbia Government represented sufficient incentive for the railway to sign the agreement which allowed definite concessions in freight rates. As the Minister of Trade and Commerce at that time stated, the reason for the Government granting a subsidy of more than twice the size proposed by the Conservative Government was the freight rate concessions being made by the C. P. R. These facts point to





the realization that the agreement as stipulated was deemed to be in the best interest of Canada only on a "forever" basis.

It is our opinion that the railway had everything to gain by this Agreement. The railway is reported to have had prior to 1897 large interests in the mineral areas of Southern British Columbia. It was anxious to have an outlet for traffic which was growing through the development of its smelting industry and in turn, provide traffic for its main lines. It was equally anxious to forestall further development of American lines into Southern British Columbia which in turn would give them a monopolistic control of all traffic. The building of this outlet from Nelson to Lethbridge would give them a chance to complete negotiations with other railway companies in British Columbia for their lines or right to build. In so doing they could secure large and valuable land areas.

These factors were such that the C.P.R. had considered building this line before the Crow's Nest Pass Agreement was signed. This is borne out by their Directors' Annual Report, 1896 - page 10. Quote:

"Your Directors are strongly of the opinion that any delay in securing your interest in that direction will be extremely dangerous--that unless your company occupies the ground others will, the demand for shipping and travelling facilities being most urgent. The Directors feel that they cannot too strongly urge the immediate construction of a line from Lethbridge to a connection with your Columbia and Kootenay Railway at Nelson, a distance of 325 miles and anticipating your approval they have already taken steps toward commencement of the work on the opening spring."



With this information, it is evident that both parties to the agreement realized that future gains were such that the Western producers should have protection with regard to rates in the shipment of grains and the westward movement of manufactured essentials and that Eastern manufacturers should be protected or assisted in placing their goods in Western Canada.

When discussing the Crow's Nest rates, or for that matter, any phase of rail transportation, we must take a look at the complex nature of the Canadian Pacific Railway system. We must realize that from its earliest inception it has been the recipient of large cash subsidies and land grants. The Crow's Nest Pass Agreement included a very large cash subsidy and made it possible for the railway to secure added land grants, these from the British Columbia Government.

These and previous grants included many acres of valuable farm lands which were later sold or are still being leased and thus are continuously revenue bearing. In the transfer of this property mineral rights were included with the surface rights. Other areas included valuable mineral and timber lands, thus over the period of years there has been undoubtedly a large revenue available which must be considered as part of the revenue of the system and not as separate enterprises. With the widespread development of oil and gas in many areas this fact is of particular significance, and at the present rate of development their potential net returns to the Company are causing our attention to be materially focussed on the subsidies and grants previously made by the Government.

The settlers of the prairies are not unmindful of the benefits accruing to the C.P.R. as a result of contracts,



agreements and regulations under which a belt, known as the C.P.R. belt, comprising 24 miles on each side of the railway line, with provision that even numbered sections within this belt would be held exclusively for homesteads and pre-emptions; the odd numbered sections to remain railway lands. This created a situation where the settlers not only developed their own homesteads and pre-emptions, but as the areas took on community status with schools, churches, roads, villages, etc. the value of the odd numbered sections for the purpose of sale or lease were greatly increased.

In the opinion of the prairie population the cash grants, transfer of other railways and the prevention of other interested parties from building railways north and south, were not, in the main, objectionable features and held a completely different status from the granting of land, minerals and other natural resources.

We hesitate to hazard a guess as to what would be the conditions today or in what position Canada would be nationally if regulations had not been implemented to prohibit the development of railways north and south in the west.

We note from a report of the Deputy Minister of Land in Alberta a statement of land sales by railway companies having Government land grants and by the Hudson's Bay Company that from 1893 to 1929 the C.P.R. sold a total of 15,789,730 acres for \$150,818,665.





In 1897, the year in which the Crow's Nest Act was assented to, the average price received by all railways was \$3.23 per acre. The average for 1921 was \$19.61 per acre and for 1929 the average was \$11.46 per acre.

In 1897 the C.P.R. sold 135,681 acres for \$431,095., an average of approximately \$3.20 per acre. In 1921 they sold 275,636 acres for \$5,898,994, an average of \$21.40 per acre; in 1929 an acreage of 447,594 was sold at \$4,902,593., an average of \$10.95 per acre. The increased price per acre and the larger amount of land sold during these later periods of higher acreage values shows the increased values of the large land subsidies over their value at the time the grants were made and since the signing of the Crow's Nest Pass Agreement.

To illustrate the C.P.R.'s obligation to carry out the Crow's Nest Pass Agreement and the necessity for the agreement to remain a statutory responsibility, we quote from the Report of the Department of Lands and Mines of Alberta 1931-32 to show in part the contributions made by Alberta and the Prairie to these subsidies up to that date:

"Land subsidies which had been granted in the Western provinces to aid in the construction of railways and granted also to the Hudson's Bay Company are shown, as applicable to this province up to the date of transfer of the resources, in the following table:

Cont'd.....



"	<u>Alberta Mileage</u>	<u>Alberta acre- age patented</u>
Calgary & Edmonton Railway Co.	295.07	1,806,168
Alberta Railway & Coal Co.	174.12	1,096,217
Souris Branch, Canadian Pacific Rly.	Nil	160
Pipestone Extension, Souris Branch Canadian Pacific Railway Co.	Nil	521
Great North West Central Railway Co.	Nil	640
Manitoba Southwestern Colonization Railway Co.	Nil	19,680
Canadian Northern Railway Company	Nil	859
Manitoba & Southeastern Rly. Co.	Nil	312
Canadian Pacific Railway Company	332.10	9,807,174
Total	<u>801.29</u>	<u>13,031,731</u>

In the four western provinces of Manitoba, Saskatchewan, Alberta and British Columbia, 3,527,26 miles of railway were constructed, each Company being given a land subsidy to aid in the construction of its own particular railway. In the four provinces combined, a total of 31,672,006 acres was transferred to the different companies as land subsidies for the railway mileage so constructed.

In this connection, a total of only 801.29 miles was representative of railway construction in Alberta.

But in spite of this small mileage no less than 13,031,731 acres has been granted out of Alberta lands, a figure greatly in excess of the actual acreage earned by the construction of transportation lines within this Province. In addition to this, these land subsidies which were granted carried to the new ownership in practically every



instance, all minerals underlying such lands."

We have not been able to obtain in Alberta information for the intervening years from 1932 to 1948 relative to the revenue from the sale of lands, lands leased, oil, gas and other sources, other than from the C.P.R. Annual Report 1948, page seven. Under income account we see that the net earnings for that year amounted to \$18,419,166; from other income \$24,864,949 -- after fixed charges of \$15,890,264., a net income of \$27,393,851. for the year.

It would be our opinion that if the Crow's Nest Pass Agreement was found untenable by the C.P.R. then it should be reconsidered on the basis of reverting back to the Government these many assets which have been turned over to the railways at one time or another, both in regard to the main and Crow's Nest lines. The Government then might find it in the best interest of Canada to subsidize certain or all traffic over certain areas between eastern and western Canada.

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The Crow's Nest Pass Agreement in its original form included the establishment of lower rates on a list of commodities, coming from Eastern Canada, which were of particular importance to settlers establishing themselves in the West and to manufacturers in the East. This bears out the fact that the Government entered into the Agreement on the basis of establishing a greater Canada by developing trade within the country, and to assist those parts both in Eastern and Western Canada which through necessity were subject to long freight hauls on both in and out movements.

In 1925 these commodities for Western shipment were deleted from the Agreement by Order-in-Council P.C. 886. During the intervening years between 1897 and 1925 many changes had taken place with regard to the development of the West. These changes did not materially affect the relationship as between the East and West nor the necessity with regard to shipment of various commodities .

I would like to make this comment here, that we are referring specifically to farm implements in this regard.

We consider that the commodities listed under the original Crow's Nest Pass Agreement should not have been --

THE CHAIRMAN: What did you say about farm implements?

THE WITNESS: We have in mind in this regard farm implements being deleted from the Crow's Nest Pass Agreement of 1925.



In support of this statement we find that through actual experience in succeeding years the House of Commons in its wisdom found it necessary in 1937 to set up a special committee on farm implement prices. We wish to quote some of the conclusions and recommendations from their report:

- "1. That the prosperity of the farm implement industry is directly dependent on the prosperity of agriculture.
2. That farmers have a right to expect the price level of farm implements to be based on the most efficient and economical manufacturing distribution cost.
3. That from 1931 to 1934 inclusive, when all the companies incurred financial losses, such were due primarily to the inability of the farmer to purchase farm implements coupled with his inability to pay for those he had already purchased, and not to the fact that prices of farm implements were lower than justified by manufacturing or distribution costs.
4. That freight rate increases have contributed to the increase in the price of farm implements.
5. That the matter of freight rates is of vital importance to the provinces more distant from the manufacturing centres and this is emphasized by the fact that the three prairie provinces absorb at least two-thirds of all farm implements sold in Canada.
6. That the matter of freight rates on farm implements should receive immediate attention with a view to restoring lower rates thereon.
7. That the interest of the farm implement industry



"and of labour engaged therein is best served by a full recognition of the fact that the prosperity of the industry and the increased and more permanent employment of labour depend on the relative and actual prosperity of the farmer and that all will benefit by lower retail prices, thus encouraging the manufacture and sale of farm implements.

8. That recent reductions in tariff and other trade barriers resulted in the Canadian companies lowering their prices on certain farm implements imported from the United States, but the United States companies manufacturing a full general line in the United States and marketing these in Canada, did not lower their prices generally on importations other than those affected by the price reductions of the Canadian companies, indicating the lack of free price competition in the industry.

9. That the committee is of the opinion that the cost of distribution of farm implements is unnecessarily high and constitutes an important factor in the prices to the consumers.

10. That the companies themselves should make every effort to reduce these costs or farmers should be encouraged to organize for the co-operative distribution and servicing of farm implements."

Two years later (1939) the Legislature of the Province of Saskatchewan by unanimous approval decided to set up a Select Special Committee on Farm Implements Prices and Distribution. The report of the Committee was adopted by the Legislative assembly on March 17th, 1939.

We quote in part from their findings and recommendations:

"This Committee finds:





- "1. That retail prices of farm implements, repair parts, and cream separators are too high, and
2. That the industry itself cannot, or will not, suggest a remedy.

The Committee therefore recommends:

1. That the Government of this Province invite the co-operation of the Dominion Government and the Governments of the Provinces of Manitoba and Alberta in the carrying out of any plan to procure substantially lower implement prices.
2. That Dominion legislation be urged to remove all tariffs and other trade barriers on farm implements, repair parts and cream separators.
3. That the Dominion Government be urged to restore the Crow's Nest Pass Agreement freight rates on farm implements.
4. The adoption, and support by the farmers of this Province, of the co-operative trading movement. "

We have referred to these reports first for the purpose of showing the fact that the repeal of certain sections of the Crow's Nest Pass Agreement was ill advised and involved the Dominion Government and Governments of the Prairie Provinces in complications arising as a result of such repeal; secondly, to point out that in the decision of the House of Commons and the Legislative Assembly of Saskatchewan it was clearly recognized that Agriculture in the Prairie Provinces is of major national importance to the success of industry, labour and the general economy of Canada; thirdly, we use the findings of these committees to establish the fact that the Crow's Nest Pass Agreement in itself does not stand alone in the consideration of the general freight rate structure of Canada but that it is an integral part of the major freight traffic of Canada.



Therefore it should not be segregated and repealed without taking into account other agreements entered into relative to the building of the main line and general railway system across Canada.

In reviewing the history of the Crow's Nest Pass Agreement as we have done, perhaps all too briefly, we wish to again note that the subsidy of \$11,000. per mile was no small contribution by the Government of Canada on behalf of the Canadian people to the C.P.R. We say this advisedly after noting that the Company was able to purchase certain railway lines from existing companies at that time for considerably less money, as reported, \$9,000.00 per mile.

In addition to this mileage subsidy, large acreages of land were transferred to the Company of which a large portion contained coal and minerals. Because of these resources the Company itself was anxious and apparently had been prepared on their own initiative, to extend their lines over this area. Other reasons for wanting to have this line built was to forestall competitive lines from entering from the South and provide outlet for their main lines to complement the potential traffic of manufactured goods from Eastern Canada into these undeveloped areas.

While the Crow's Nest Pass Agreement was a full recognition on the part of the Dominion Government that in the best interests of Canada encouragement should be given to the development of her national resources, it also recognized that the development of her vast agricultural areas in Western Canada was of still greater importance. The findings of the two committees mentioned above clearly illustrate that this original necessity



had not been outlived, but indeed, almost if not equally, existed in the middle and late thirties.

We believe that the safeguards provided by the Crow's Nest <sup>Pass</sup> Agreement, as we have tried to point out in this brief are equally necessary today and we consider that it would be a breach of faith on the part of the C.P.R. to now ask that the agreement be terminated.

It would be just as logical for the Government to ask for the return of lands and all rights that go with such lands as it is for the railway to now ask that they be released from the covenant made with regard to the Crow's Nest Pass Agreement.

In conclusion we wish to point out that the Alberta Federation of Agriculture as a farm organization representing the farmers of Alberta, is unalterably opposed to any move which will transfer the responsibility of establishing these rates from the statutory position to that of the Board of Transport Commissioners.

Alberta Federation of Agriculture,

Roy C. Marler,  
President,

James R. McFall,  
Secretary.





EXAMINED BY MR. COVERT:

Q. Mr. Marler, on page 2 of your brief in the paragraph just before the last one, you say:

"Therefore, we are sure that the many members of parliament representing all areas in Canada, because of their intimate knowledge of these conditions, are in a better position to be trusted with the responsibility of the Crow's Nest Pass Agreement than are the Board of Transport Commissioners."

THE CHAIRMAN: What page is that, Mr. Covert?

MR. COVERT: It is page 2, Mr. Chairman; the penultimate paragraph, and it is the latter half of that paragraph.

Q. When you say: "-- in a better position to be trusted with the responsibility" of the Agreement do you mean that they are in a better position to decide whether or not the rates should be changed, or do you mean that they are in a better position to determine what the rates should be?

A. I think they are in a better position to determine what the rates should be.

Q. That is the Members of Parliament rather than the Board of Transport Commissioners?

A. Yes.

Q. In what way would you say they are better qualified to determine what the rates should be?

A. Because they are more intimately acquainted with the various fluctuations in regard to price of agricultural products as reflected back to the producer, and to fluctuating conditions as a result of climatic conditions, and other conditions, in relation to the production of agricultural products, particularly grain.

Q. You think those matters are important things



which should determine what rates should be on grain?

A. I think that the western grains -- wheat and coarse grains -- are of such national importance that this is not a concession to western farmers alone; it is a concession to Canada as a whole. I think it is borne out by our present status in that the Dominion Government is paying the freight from the head of the lake to eastern Canada in order to assist eastern farmers in using this grain.

Q. It would seem to me, from reading the paragraph, that you might have meant more as to whether or not they should ever be taken out, or whether they should ever be considered due to national policy that they might be better, but you really mean that the Members of Parliament are in a better position to determine just what the rates should be?

A. Yes, I do, because I think rates of western grains come under national policy as regards their importance.

Q. Yes. Mr. Marler, do you think there is anything else in Canada that is in the same position?

A. Do you mean in regard to national importance?

Q. No, I do not mean that. I mean in determining what rates should be -- is there nothing else in the same category as grain that involves - - - -

A. I would not say; I do not know.

Q. You cannot think of anything being in?

A. I have not even given it any thought. That question refers to rates, does it?

Q. Yes. On page 4 you say that the major portion of your exports compete with grain producing countries having ready access to seaboard shipping. I suppose the real point would be, Mr. Marler: What does it cost to get your wheat to the world market?

A. That is right.

(Page 19680  
follows)



Q. And when you talk about the western farmer having to compete with grain producing countries having ready access to seaboard shipping, then to make the comparison valid you would have to indicate what it cost in each country to get that wheat to seaboard?

A. That is right. Perhaps I should not say that is right. What we have in mind there is that Britain is one of our best consumers, best markets, and if Britain is prepared to pay a certain price at Liverpool, then we have to be able to compete at Liverpool with that price against for instance the Argentine, with a shorter haul, or even France, which has come back into an exporting country the last year or two -- last year, I believe.

Q. Now, your chief competitors, I suppose, are the Argentine, Australia and the United States?

A. They are among them, yes -- major.

Q. Have you any statistics to show what it costs the producer in those countries to get his wheat to the same market that you do?

A. No, I have not.

Q. Have you ever made a comparison of what it costs the western farmer to get his wheat to say Liverpool as compared with the grower in the western United States?

A. No, I have not.

Q. Now, I think you mention somewhere in your brief -- I think it is on page 8:

"The settlers of the prairies are not unmindful of the benefits accruing to the C.P.R. as a result of contracts, agreements and regulations under which a belt, known as the C.P.R. belt, comprising 24 miles on each side of the railway line, with provision that even numbered sections within this belt would be held exclusively for homesteads and pre-emptions; the odd





numbered sections to remain railway lands."

Now, in effect what you say is that the C.P.R. received a great many benefits from this contract, and I think you end up by saying that it is as illogical for them to come along and ask for a change in the rate that was provided for by that agreement as it is to have them turn back the benefits which have accrued?

A. Yes, that is what we say.

Q. Now, let us assume for the moment, Mr. Marler, that they did get all these benefits as a direct result of the contract; could you conceive that there was still a very important issue from the point of view of Canada as a whole, that the continuance of the railways, specifically the Canadian Pacific, was an important thing for the country?

A. You mean do I consider that the maintenance of the C.P.R. on a sound and serviceable position is of national importance?

Q. Yes.

A. Yes.

Q. Also I think you would agree that if the prairies depend greatly on the wheat economy, it is very important that nothing be done with grain rates which would affect the production or export of wheat?

A. That is correct.

Q. So that you may have to balance the two positions, the position of the railway and the position of the western producer?

A. I am not just sure what you mean there.

Q. Well, as I say, I am suggesting that on the one hand you have the importance of the wheat economy in the west?

A. Yes.

Q. And that rates should not be affected, that nothing



should be done to rates that would affect the production and export of wheat?

A. Yes.

Q. That is on the one side of the scales; and on the other is the position of the Canadian Pacific, as being able to carry on successfully as a railway?

A. Yes, I agree with that. The word "balance" is what I did not understand in your first question.

Q. What I am saying is this, that if a change in the Crow's Nest rates did affect the western farmer, that is one thing you have to consider?

A. Yes.

Q. And, on the other hand, to change the rates might affect the ability of the Canadian Pacific to carry on?

A. Not necessarily.

Q. No, I am not saying necessarily. I say if -- if that position did accrue. What I want to get at is, what you really say is, there is one person, one body, to decide that, and that is Parliament?

A. We think they are the proper body to make that decision.

Q. If, then, something could be done, Mr. Marler, that would place the restrictions on the Board of Transport Commissioners in dealing with rates on grain---

A. Restrict?

Q. Yes; so that they had to take into account such questions as the fact that the west depends on the wheat economy, and the importance of the wheat economy to Canada as a whole, the fact that they must export the product, and the fact that railways have no competition to compel them to keep rates as low as possible on the movement of grains -- suppose, as I say, it were possible to make effective restrictions of that kind on the Board of Transport



Commissioners, would you still say that the rates should not be taken out of the statute?

A. Yes, we do.

Q. You think that nothing could really be done, Mr. Marler, to put the Board of Transport Commissioners in a position that they could deal with these rates at all?

A. I do not think anything could be done that would place them in as good a position to deal with them on a basis of the national interest as leaving them with the statute.

Q. You do not say, Mr. Marler, that the rates should never be raised?

A. No, I would not go that far.

Q. Are you in agreement with the witnesses who have said that one of the main reasons is that the farmer fears -- I will put it this way, that one of the main reasons that the farmer is afraid of having the rates under the jurisdiction of the Board of Transport Commissioners is that the railways have no competition as far as the movement of grain is concerned and are unlikely ever to have any competition?

A. That is one. I hardly think that is maybe the major; it is one of the major ones, yes. There are other major ones as well.

Q. Now, on page 11, in the second paragraph, the latter part, you made a reference this morning to the effect that you referred specifically there to farm implements, and you said:

"We consider that the commodities listed under the original Crows Nest Pass Agreement should not have been deleted from the Agreement in 1925."

And I think you said <sup>at</sup> that point that you were really referring to farm implements?

A. Yes, we wish to emphasize farm implements.





Q. Now, are you suggesting, Mr. Marler, that they should be put back into the statute?

A. I think they are of such national importance that it was a mistake to take them out. I think they should be replaced.

Q. And you think they should be put back---

THE CHAIRMAN: Q. What do you say? You say you think they should be put back?

A. I think they should be put back, sir. The reason I say that, sir, is that under the Crow's Nest Pass agreement the freight rate from Ontario to Alberta on farm implements was \$1.25½, if my memory serves me right, and today it is \$2.30.

Q. What are those two figures?

A. \$1.25½ under the Crow's Nest agreement and \$2.30 today. Now, to further substantiate that statement, in 1929 there was \$18,932,000 worth of farm machinery---

MR COVERT: Q. What year was that?

A. 1929, unloaded, imported; and in 1933 there was \$108,000. In 1937 the House of Commons Committee found that there was a backlog of farm machinery of \$200 million in Western Canada.

THE CHAIRMAN: Q. What do you say?

A. A backlog of farm machinery of \$200 million in Western Canada, and the annual requirement was \$51 million.

MR COVERT: Q. Of course, I suppose, taking figures like 1929 and 1933 for comparative purposes would be a bit deceptive, wouldn't it?

A. Well, 1933 at least would be an extreme, I admit that, yes.

Q. And 1929 would be an extreme too?

A. That is true.

Q. But what I was coming to was, when you say they



should be put back into the statute, does that mean in your opinion, Mr. Marler, that in your view the same rate should exist now on farm machinery as existed in 1897?

A. Yes.

Q. And it is your view also that Parliament would be in a better position to deal with rates on farm machinery than the Board of Transport Commissioners?

A. Yes, I think they would. I think that farm machinery is of interest to labour, industry and agriculture.

Q. It is not just because they were originally in the agreement that you are suggesting this, but you say that actually Parliament would be better able to deal with it?

A. That is correct.

Q. You do not think that there is any necessity for all of the items that were originally in the Crow's Nest agreement to go back?

A. Some of those items do not affect the west, and I assume that perhaps as a result of conditions in the west, where certain commodities are now produced that perhaps were not produced to the same extent at that time, it did not matter much whether taken out or left in. Perhaps the flow back and forward would have stopped anyway.

Q. Just one more question on that, Mr. Marler. You would not think that the agreement should be restored in its entirety?

A. Well, as I said, I said, I do not think it would make much difference in regard to some of the commodities.

Q. I suppose if it were restored as far as those things were concerned, that would also involve the restoring of the agreement as it was interpreted by the Supreme Court, that it only applied to lines---



A. I have not made a special study, but I doubt whether there would be any harmful effect to restore the full agreement.

THE CHAIRMAN: Q. Would you please speak louder?

A. I have not made a study of the other commodities apart from coarse grains and implements, but I doubt if any ill effects would come from the restoration of the whole agreement.

(Page 19690 follows)





Q. What I was referring to, Mr. Marler, was that my understanding is that the agreement was interpreted by the Supreme Court of Canada to the effect that it applied only to lines that were in existence in 1897.

A. Yes.

Q. To restore it to this basis would really be a practical impossibility, wouldn't it?

A. Well, the agreement itself does not change that position, does it? I suppose that was a mutual agreement. The agreement itself in effect in my understanding does not change that position, that that was a voluntary agreement proposed by the C.P.R. back near 1903 in which the rates on grains in Saskatchewan and Alberta were two cents below the Crow's Nest Pass Agreement from 1903 to 1918 as a result of certain agreements or certain actions of the Manitoba government and competition from the Canadian Northern; and I did not know that that was part of the agreement where the extension of the Crow's Nest rates applied to other lines that were built at that time.

Q. Now, you recall the situation was this, as I understand it, that the Canadian Pacific extended the rates to all of its lines, and as a matter of fact I think, as you point out, that for a long period of years they had rates below the Crow's Nest level?

Q. Yes.

Q. That really, I suppose, was the result of competition brought about by the so-called Manitoba Agreement

A. I would think that would be a fact.

Q. Then that the rates were later raised as the result of the suspension of the agreement by Parliament?

A. Yes.



Q. Then what followed after that, according to my understanding, was that the Canadian Pacific applied the tariffs only to the lines which they felt they were obliged to under the agreement, and Parliament upheld that decision. When I say Parliament upheld that decision, the Supreme Court upheld that decision, interpreted it to mean that it applied only to lines of the Canadian Pacific that were in existence at the time it was entered into.

A. That is my understanding

Q. Yes. Then Parliament at that time decided that that was not a feasible thing and passed legislation making it applicable to all lines and not only to the Canadian Pacific but to all railways.

A. I wasn't aware of that.

Q. I just wanted to know what your feeling would be, because, as I say, you seem at this stage to place great reliance on the agreement.

A. Yes.

Q. You say the original agreement provided for rates on other articles. You say for instance that on farm machinery it should be restored?

A. Yes.

Q. Well, if you restored farm machinery, should Canadian Pacific also be put in the position that it only applies to the lines for which the agreement originally provided? You would not agree with that?

A. We believe that the House of Commons and Parliament is in the best position to decide what is in the best interest of the general economy



of Canada in regard to rates on western grain.

Q. Yes, also farm machinery?

A. Yes, that is correct.

Q. That is all, thanks.

THE CHAIRMAN: Any questions?

CROSS-EXAMINED BY MR. SPENCE:-

Q. Mr. Marler, your Federation, I think, appeared before the Board of Transport Commissioners in the 21 Per cent Case?

A. Yes, I believe they did. I did not appear myself. I was out of the Province I believe at that time.

Q. And at that time they opposed the freight rate increase that was being requested by the railways?

A. I believe that is correct.

Q. Now, at the beginning of your Brief you say that your Federation represents 60 different agricultural producer organizations. What types of production are covered by those 60 members of your association?

A. I think we cover every type of production in Alberta. There is only one organization of agricultural producers that does not belong to our organization, that is of any size; that is the Western Livestock Growers, an organization in Southern Alberta usually considered in the status of a ranchers' organization.

Q. Well, have you livestock organizations?

A. Yes, we have.





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Q. Within your Federation?

A. Yes we have.

Q. And dairying organizations?

A. Yes.

Q. Now, has this Brief that you have now presented been approved by these member organizations?

A. In December we had our annual meeting of our Federation which takes in delegates from each group, each group has a certain status of delegates according to its membership. At that annual meeting of the delegate body a resolution was passed opposing the reverting of the Crow's Nest Pass from the Statutes of Canada.

Q. Now, has it ever been explained or is it understood by, for instance, the dairying members of your organization that rates on their products as well as rates on the goods that they consume, are higher because of the existence of Crow's Nest rates on grain?

A. I have not heard any discussion in regard to the Crow's Nest Pass Agreement as to those commodities myself in recent years. We have not discussed that angle of it.

Q. So that those members have not taken into account the effect on their freight rates of the low rates on grain?

A. Well, we are not asking in our Brief for the agreement in its original form to be reinstated. We have not dealt with that matter.

Q. But you are objecting to any increase in the rates on grain that might result from placing the



rates under the jurisdiction of the Board.

A. Yes.

Q. And you have not taken into account the fact that if grain rates were raised, that that should have some moderating effect upon the rates, for instance, of dairy products?

A. Well, dairying in our province is so relatively small to the grain economy, that we first look upon the grain economy as the most important, and the prices of other commodities bear a fair relationship to the schedule of grain prices.

Q. But wouldn't it be a fact that to the dairying members of your organization the freight rates that they pay are the most important freight rates in the book?

A. Well, as I say, generally our dairying in Alberta is carried on by diversified farming practices, and nearly every man who is producing dairy products is also producing grains and livestock.

Q. Now, I take it from the general tenor of your Brief, Mr. Marler, that you regard the Crow's Nest Pass rates as a factor in the wellbeing of the Prairie Provinces - in fact of Canada?

A. That is right.

Q. Now, on the first page of your Brief about the middle of the page you say:-

"The marketing problem of the prairie grain producer cannot be considered a purely sectional matter but is rather one of truly national concern. We do not feel that the marketing of the Western grain



crop involves any regional conflict of interest. In fact it would be true to say that the prosperity of other regions is most intimately connected with the success of that undertaking."

Now, you would agree, of course, Mr. Marler, that anything affecting the freight rates of a region is of direct concern to that region?

A. That is true.

Q. Therefore you would agree that if, for example, exceptionally low rates in effect in the Prairie Provinces caused rates in, say, British Columbia or the Maritime Provinces to be higher than they would otherwise be, then such a situation would be of direct, and perhaps vital, concern to British Columbia and the Maritimes?

A. You are referring to grain rates in the Maritimes and British Columbia?

Q. No, I am referring to grain rates in the Prairie Provinces as they affect rates of other commodities in the Maritimes and British Columbia, and you agreed that the freight rates of a region are of direct concern to that region?

A. Yes.

Q. Now, the freight rates in the Maritime Provinces are of direct concern to the Maritime Provinces, isn't that correct?

A. We do not necessarily agree that rates on grain necessarily, assuming that the rates on grain were below the cost-plus basis, we do not agree that they necessarily have to be made up from higher rates





on other commodities.

Q. Have you considered the statement in the Canadian Pacific Submission that if the rates on grain had been within the jurisdiction of the Board, the freight rate increase of 21% would have only needed to be 18%?

A. No, I have not had the privilege of having one of the C.P.R.'s submissions to look over, but we do not agree that the freight rates on Western grain should be set on a cost-plus basis, and, with that in mind as one of the major reasons, <sup>we</sup> we feel that the Board of Transport Commissioners are not in as good a position. It is not because we have any lack of confidence in the Board of Transport Commissioners, but it is because of their status <sup>not</sup> in/being able to take other considerations into the matter, particularly the mineral rights, lands and grants of that kind which are so potential at the moment in Alberta. The C.P.R. still holds lands and are offering them for sale today at \$20 an acre, and there is an injunction now in Alberta on the Imperial Oil and the C.P.R.

(Page 19700 follows)



Q. Excuse me for interrupting you, but I do not think that quite answers the question I asked you.

A. I was just giving you the reasons why we do not think that freight rates on grain necessarily need to be made up by freight <sup>rates</sup> on other commodities.

Q. The railways are obliged to carry the grain, are they not?

A. I believe that is true, yes.

Q. And they have to pay their expenses in carrying that grain?

A. I would think so, yes.

Q. And those expenses and the other expenses and costs of the railway must be made up in freight rates, must they not?

A. I would not think so, under those circumstances.

Q. You would not say that the railways, in fixing their freight rates, should fix them in relation to their costs?

A. On grain of western Canada? Is that what you are referring to?

Q. All their costs.

A. We say that on grain of western Canada freight rates should not be set on the cost-plus basis under the present status. If the railway feels that they cannot carry on under the agreement, the first move is theirs; and we suggest in our brief that if they find themselves in that position --

THE CHAIRMAN: Q. What is that? I could not hear what you said.

A. If they find themselves in that position, the railway system being of such national importance, we suggest that consideration should be given to it by our government; and that the government, in doing so, should take into



consideration the concessions that have been given down through the years and deal with it on that basis.

MR. SPENCE: Q. Mr. Marler, when the "21 per cent" freight rate case was decided by the board, it was decided upon the basis of the situation that existed, in which the railways were not able to make any adjustment of their grain rates and the board was not able to make any adjustment of those grain rates; and yet the railways' costs and a reasonable amount to keep them in efficient condition had to be returned to the railways. Do you suggest that that "21 per cent" judgment was wrong in giving the railways an amount calculated to return to them a reasonable amount to keep them in a state of efficiency in those circumstances?

A. As I said before, we believe that in arriving at rates it cannot be done disregarding the concessions that have been given to the railway.

THE CHAIRMAN: Q. Will you speak a little more loudly, Mr. Marler? You let your voice drop and we cannot hear you.

A. I am sorry, sir. We say that in setting the rates on grain, the rates should not be set without proper consideration being given -- and rates that apply to other commodities as well -- to the concessions that have been made to the railway company down through the years and which are accumulating as the years go by.

Q. Then I suppose you say that the Board of Transport Commissioners has no authority to take such things into consideration?

A. Not to my knowledge.

MR. SPENCE: Q. Would you agree, Mr. Marler, that if by reason of the existence of grain rates on a low level other regions of Canada are, under the present set-up and system, obliged to pay higher rates than would otherwise be necessary, there are certain disabilities to those





regions which at least to some extent balance up any advantage that those regions obtain from the success of the prairie provinces in maintaining transportation rates at a low level? In other words, you say in your brief that the transportation rates in western Canada on grain are an advantage to all Canada?

A. That is right.

Q. Would it not be fair to say that there are certain disadvantages that accrue to the rest of Canada by reason of those low rates?

A. No. I do not think that can be said or can be substantiated.

Q. At any rate, that is your position?

A. That is what I think, sir. I think I have answered that question before by saying that I think these rates are in the best interests of the Canadian economy.

Q. On page 2 of your brief you speak of the common practice of "mining the soil"; and you say that this has been brought about through the low economic level of the agricultural industry at certain periods of its history in the west. Then in the last clear paragraph on page 2 you go on to say as follows:

"Therefore we are sure that the many members of parliament representing all areas in Canada, because of their intimate knowledge of these conditions, are in a better position to be trusted with the responsibility of the Crow's Nest Pass agreement than are the Board of Transport Commissioners."

From this statement is the commission to take it that, in your view, the Board of Transport Commissioners is not familiar with economic conditions in Western Canada?

A. They are not as closely in touch with many of the conditions.



Q. Have you at any time looked into the personnel of the Board of Transport Commissioners, and are you aware of the fact that for a great many years, if not from the inception of the board, there have been on it members who are natives of western Canada?

A. As I said before, we have no lack of confidence in the Board as such, but we feel that the House of Commons, which is made up of men who live in the various communities, are more familiar with the fluctuations and the effect of the fluctuations in prices, fluctuations as a result of climatic conditions and so on, and have a better appreciation of those factors than any few half dozen men or less could possibly have.

Q. You speak of half a dozen men. Are you aware of the fact that the Board of Transport Commissions is equipped with a Bureau of Transportation Economics, composed of a very substantial number of experts? And --

A. I have a very high regard for the --

Q. Just a minute till I finish. And the duty of those experts is, among other things, to maintain a constant watch on and to keep constantly in touch with economic conditions throughout Canada. Had you given consideration to that fact?

A. What do you mean by "experts"?

Q. The men who would be engaged in the work of the Bureau of Transportation Economics.

A. And not experts on agricultural conditions?

Q. You say that they are not --

A. Agricultural economists. I am trying to find out what you mean by "experts". You term these economists that you mention as experts in determining the policy and the effect on agriculture as a result of climatic and fluctuating conditions. Are they experts only in regard to transportation?



Q. The Board has the power and the authority to engage any experts along that line that it requires.

THE CHAIRMAN: Mr. Spence, may I just interrupt you here to ask you a question which I think is of importance. What is your view with regard to the jurisdiction of the board in setting freight rates? Do you think that it takes economic matters into consideration?

MR. SPENCE: I think that is one of the factors they take into consideration.

THE CHAIRMAN: At what page of your brief was it that you state what you propose should happen if your recommendations were carried out? I believe it is page 189. We have gone over that matter many times. I think we have been told several times by counsel for the C.P.R. that, as is said in the last paragraph of page 189 of the brief:

"Before fixing the rates on grain and grain products in Western Canada, Canadian Pacific would expect a most thorough and detailed study by the Board. In developing the cost of handling grain in Western Canada Canadian Pacific has voluminous working papers. These can be made available to the Commission if desired, -- "

And so on. We have been told that it is not the intention of the Canadian Pacific Railway that the board should be made an economic planning board. That is so, is it not?

MR. SPENCE: Yes; that is so, my lord.

THE CHAIRMAN: It seems to me that, in the questions which you are addressing to Mr. Marler, you are setting up the suggestion that the board in fact is a planning board, that it can study economic conditions in fixing freight rates, the matter of encouraging industries and things of that sort.

MR. SPENCE: As I understand it, my lord, the Board





takes into account all factors. I do not suggest that the board should set out to plan the economic development of Canada in detail or anything of that kind; but I do suggest that the board does have regard to every factor that affects or may affect the justice and reasonableness of a rate.

THE CHAIRMAN: If the Board's jurisdiction is so broad as all that, we would not have had the necessity of enacting the Maritime Freights Rate Act. There again you have a portion of the country which claimed that certain things ought to be done in favour of its economy. You know how that problem was solved. The railways are allowed to fix their rates by their ordinary methods of fixing them, and then parliament votes this subsidy. I think it is important to know what the position is; because it seems to me that you are now addressing questions to Mr. Marler which do not express the views of the company in respect of what the jurisdiction of the board ought to be, as we have heard them so far.

MR. SPENCE: One of the basic considerations taken into account in connection with maritime freight rates was the historical question.

THE CHAIRMAN: I know that.

MR. SPENCE: Of course the board would have no part in that.

THE CHAIRMAN: Why not? You seem to be saying that the Board in fixing grain rates would be affected by the economic considerations of the production and shipping of grain.

MR. SPENCE: The Board must look into every factor.

THE CHAIRMAN: It is important for us to know exactly what the position of the Canadian Pacific Railway is in respect of the Board, in order that we may know what they expect the Board to do if the change which they now ask for should be granted. So far, I have not understood the



company to take the stand which you seem to be taking this morning, Mr. Spence.

MR. SPENCE: Possibly I have said something that I should not have said, my lord. But my understanding is --

THE CHAIRMAN: You are asking Mr. Marler questions to show that the members of the Board are just as capable personally of taking into consideration these economic phases as the members of Parliament are. That is what you are saying.

MR. SPENCE: Yes, agricultural and climatic conditions.

THE CHAIRMAN: Can they fix rates on that sort of basis?

MR. SPENCE: As I understand it, my lord, they fix rates on the basis of what is just and reasonable.

THE CHAIRMAN: Oh, yes.

MR. SPENCE: Having regard to every factor--economic factors, climatic factors, factors of comparison with other rates and factors as to the value of the product.

THE CHAIRMAN: Oh, yes. I suppose that goes along with the principle of the value of the service; it varies according to the commodity.

MR. SPENCE: Yes. But the very fact that the Board has a Department of Transportation Economics is an indication of the situation.

COMMISSIONER ANGUS: Have the C.P.R. not also said that rates ought not to vary with the price of the commodity?

MR. SPENCE: Yes; that is so. The Board has said that many times. But nevertheless the Board does have regard to the value of the commodity in fixing rates.

COMMISSIONER ANGUS: The value of the commodity but not its price changes from year to year.

MR. SPENCE: Not its price changes from year to year, no. Otherwise there would be no stability in the rates at all. There would be no assurance that the rates were



going to be on any particular level at all. But in the long run the value of the commodity, of course, is taken into account in fixing rates. May I proceed?

(Page 19709 follows)





THE CHAIRMAN: As long as we proceed on grounds we quite understand. As I say, so far you have been questioning the witness as if you had in mind that the Board would take into consideration, in dealing with a matter such as this, the same things as the Parliament of Canada would take into consideration in making, for instance, the Agreement of 1897.

MR. SPENCE: Well, my lord, there is the suggestion in this Brief that the Board of Transport Commissioners has no intimate knowledge of the conditions in Western Canada, and I was intending to go ahead a little bit in asking Mr. Marler if he knew what contacts the Board had with Western Canada.

THE CHAIRMAN: You see, they may have a very intimate knowledge of the economic conditions in various regions of the country. Then the question arises: What is their duty, nevertheless, in fixing freight rates?

MR. SPENCE: Q. Mr. Marler, do you - -

THE CHAIRMAN: Do you not think, Mr. Spence, that if you look at Section 325, sub-section 5, it will appear that the reason for the proviso to that sub-section must indicate that the Board would not be able to take into consideration matters which the proviso covers in making this agreement binding in taking these rates out of their jurisdiction?

MR. SPENCE: I do not think, with respect, my lord, that it says that the Board would not be capable of doing so.

THE CHAIRMAN: Yes, but the fact that it says that these rates are to be reserved to Parliament -- that is what it means -- it would seem to me to throw



some light on the interpretation. You see, I think this is the first time we seem to have been told on behalf of the Canadian Pacific Railway that this Board should be in any way an economic planning board.

MR. SPENCE: I am not suggesting that, my lord. I do not think that the Board should, in the broad sense, be an economic planning board at all, but I do say that the Board has the machinery and the ability to take into account, in the fixing of just and reasonable rates, economic conditions as well as all other conditions.

THE CHAIRMAN: I see; very well, go on.

MR. SPENCE: Q. Mr. Marler, are you aware that the special consultant of the Board, Mr. Stoneman, is a Saskatchewan farmer with a wide and expert knowledge of conditions?

THE CHAIRMAN: You are talking now of members of the Board?

MR. SPENCE: Mr. Stoneman, the special consultant to the Board.

THE CHAIRMAN: There is a Mr. Stoneman who is a member of the Board.

MR. SPENCE: He was a member of the Board, and he is now retired from the Board, but employed, or retained, by the Board as its special consultant upon any problems that may arise.

THE CHAIRMAN: He must have had a long experience on the Board.

MR. SPENCE: He had, my lord; 20 years, if not longer. I think it was 20 years.

Q. Were you aware of that fact, Mr. Marler?



A. No, I was not, sir, but I think it is relevant. With regard to the personnel of the Board, even if they were all farmers, that would still not alter our feeling with regard to the matter. To show what I think you are trying to establish here that they do necessarily adjust the rates to suit the economic conditions I will quote some figures. If my memory serves me right -- and I ask to be pardoned for using an extreme case to bring out this point -- in 1932 the price of barley in the year averaged 12 cents a bushel, and the freight was  $12\frac{1}{2}$  cents a bushel.

THE CHAIRMAN: Q. You say the price of barley was what?

A. 12 cents a bushel, 1932; -- that is the average price for the year -- and the freight on a bushel of barley was  $12\frac{1}{2}$  cents.

Q. What happened to the barley?

A. Most of it stood still, sir.

MR. SPENCE: Q. Did the Board have power to alter that rate?

A. Well, I suggest they did not, but I also suggest that if they had - -

Q. Why are you mentioning it?

A. I suggest it would have been possible for them to establish rates on a cost-plus basis, and yet take into consideration the economic factor and the general position of agriculture in the west.

Q. Let us speak for the moment of perhaps a similar situation, that as to livestock. Do you recall that when the livestock industry got into difficulties the Board reduced the rates on livestock, and the Board





themselves voluntarily reduced the rates again in order to assist the livestock industry?

A. Yes, but it never overcame the back-log, or the lowering of the price of livestock, so that in those years it would give relief to agriculture in order to realize on that livestock in those particular years.

Q. There was relief given to the livestock industry with rates under the Board, and there was no relief given in the case of barley, as you mentioned, when the rates were under the Crow's Nest Pass?

A. I think the relief was not sufficient at that particular time in 1932, to which I am referring here, to properly move livestock to the extent that it brought a reasonable return to the farmer. I know that from experience.

Q. It was some relief, in any event, in the case of livestock?

A. It was some assistance, yes.

Q. Are you familiar with the fact that the Board, as constituted under the Railway Act, is what is called an ambulatory tribunal? That is, that it travels throughout Canada at least once a year; sometimes two or three times a year?

A. I know they have different sittings throughout Canada; I do not know what the schedule is.

Q. And they hear complaints and applications right at the point those complaints and applications arise?

A. Yes, they do.

Q. And they hear anyone who chooses to go before them and give evidence right on the spot?



A. I believe that is correct.

Q. Now, having those factors in mind do you not think it would be a mistake to reject the Board of Transport Commissioners as the proper body, and the expert body, with which to deal on the question of grain rates?

A. No.

Q. At the top of page 3 you say that the safeguards established under the Crow's Nest Pass Agreement are essential to the welfare of the western provinces. In speaking of safeguards would you agree that if the western farmer were assured that the rates charged for the transportation of his grain would henceforth and forever be just and reasonable rates to him that he would be properly safeguarded?

A. Who would that assurance come from?

THE CHAIRMAN: You must let us know what you mean more clearly by just and reasonable rates.

MR. SPENCE: Well, my lord ---

THE CHAIRMAN:~ What I mean is: Would those rates vary in accordance with the value, or the price, of his commodity? How would they be just and reasonable rates? Are they just and reasonable in the ordinary understanding that he is paying for the haulage of a commodity so many miles, and it would cost the railway so much to do it, and he should pay so much regardless of the price? You see, it is important for us to know just what the Canadian Pacific Railway intends, if they succeed in having this Act changed, what the Board shall do hereafter in fixing rates to take the place of the rates now prevailing by virtue of the Act.

MR. SPENCE: Well, my lord, it is not --

THE CHAIRMAN: You asked Mr. Marler whether he does not feel that the producers of grain would be safe in the



hands of the Board in that respect because the Board would take into consideration their economic condition in fixing grain rates. Is not that what you say.

MR. SPENCE: Yes, the Board would take into consideration all matters that bear on the question of whether the rates were just and reasonable and it is not for me to say what would be a just and reasonable rate.

THE CHAIRMAN: You say all matters which bear on the problem of whether the rates are just and reasonable. Just and reasonable in respect of what?

MR. SPENCE: Just and reasonable to both parties. Just and reasonable taking into account every factor that the Board considers has a bearing on the question. It is not for me to say what particular rate is a just and reasonable rate; it is for the Board to determine, and the Board is an expert body equipped to determine that.

THE CHAIRMAN: Do you mean that in certain years when the price of grain was so low as in those years Mr. Marler referred to, that the Board has reduced freight rates accordingly so as to still leave some benefit to the producer?

MR. SPENCE: If the Board thought that was a just and reasonable thing to do, yes, they would do it.

THE CHAIRMAN: I think, all considered, that before we close we should have a very, very clear statement, preferably in writing, from the Canadian Pacific Railway as to what they really do intend the jurisdiction of the Board would be, or ought to be, in respect to these particular rates if the act of Parliament were repealed and jurisdiction given to them, because it does seem to me that you are putting the case before the hearing for the first time





MR. COVERT: Mr.Chairman, it might be of interest, if that statement was made, if they would consider what the Board did in the case of coal and coke. I refer particularly to page 66 of the 21 per cent case where it is said:

"Coal and coke are commodities of most wide and general use and of such vital importance to industry and to the people of Canada as a whole, that I am impressed with the desirability of limiting, as far as reasonably practicable, any additional burden in the way of advance of freight rates on this class of commodity, and of spreading the advance equally over the whole of such traffic, regardless of the length of haul."

That seems to be an indication there that the Board thinks they have powers to deal with matters of vital importance to industry, and so whether they should have that same power ---

THE CHAIRMAN: Yes, but what we both want to know is whether the Canadian Pacific wants the Board to have such a power in connection with the hauling of grain.

MR. COVERT: That is right. My point was whether they think they should exercise powers of this kind with respect to grain.

THE CHAIRMAN; I think, if you look at the evidence, every time we have had to discuss that question arising out of page 189 of the Canadian Pacific brief there has been a discussion on it, and I think that the views of the Canadian Pacific Railway Company as put forward by counsel on those words are not the same as we have heard this morning.

MR. COVERT: Yes, my lord; it is more like what appears on page 54 of the Judgment.



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THE CHAIRMAN: What is that?

MR. COVERT: There are several quotations there, but it is where they say:

"It has been held time and time again that the rate-regulating commissions have no right whatever to attempt to equalize geographic, climatic, or economic conditions" -- and so on.

THE CHAIRMAN: Yes.

MR. COVERT: It seems rather strange that there would seem to be these two conflicting views on page 54 and page 66, and that is why I say it might be advantageous if the Canadian Pacific in making that statement would indicate what they feel the Board would ---

THE CHAIRMAN: I think it has been brought to our notice that it is only in connection with coal that the Board has ever produced that sort of thing.

MR. FRAWLEY: They deal with coal, as Mr. Covert has said, on page 66, but on page 54, and earlier pages, they review quite extensively what they said in earlier cases, and I only stop to read one short passage from Western Retail Lumberman's Association-v. Canadian Pacific, Canadian Northern and Grand Trunk Pacific Railway. It is page 54 of this Judgment. "It" -- meaning the Board -- "is not called upon, through the reduction of the rate, to guarantee that the business will be carried on at a profit. In other words, the needs of the business and the way in which it is carried on are not the measure of the reasonableness of the rate."

Therefore I say in view of that, it would be wholly inadequate for them to take over the grain rates.

THE CHAIRMAN; Mr. Spence, we will take a few moments off.  
--Recess.

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MR SPENCE: My lord, on this question of just and reasonable rates, we intend to deal with that as fully as possible in our argument, Mr. Sinclair and I, and perhaps, with your permission, we might leave it.

THE CHAIRMAN: Yes. You see, we want to know it in its special application to these particular rates, Crow's Nest Pass rates.

MR SPENCE: Yes, my lord, I understand.

Q. Now, Mr. Marler, will you turn to page 4 of your brief? At the top of page 4 you say;

"The volume produced has increased many times. This larger volume, the use of larger grain cars and great distances, along with the fact that the producer pays for loading and unloading, make for greater economy of transportation by the railways."

Would you not agree, Mr. Marler, that an increased volume of traffic on the railway may mean only an increased loss to the railway if the rates charged for the carriage of the traffic are not compensatory?

A. If they are not compensatory, I assume that is correct.

THE CHAIRMAN: Pardon me. May we at least get this settled, that the view of the railway is that rates must always be compensatory?

MR SPENCE: Yes, my lord.

Q. Then, Mr. Marler, it might well be a fact, might it not, that, while certain economies could be accomplished through larger volume -- we do not deny that -- those economies might be more than balanced by a loss caused by non-compensatory rates?

A. I suppose it is possible for the economies not to fully compensate the loss, in a case, an imaginary case.

Q. In that passage that I read to you, you cite as





one of the reasons for your proposition the fact that the producer pays for loading and unloading the grain?

A. Yes.

Q. Now, you are aware, are you not, that the same fact is true as to all carload traffic, and that there is no distinction in this respect as to grain traffic?

A. I do not know, I am sure.

Q. Then in the last paragraph on page 4 you refer to the fact that during the last five years a stable price for wheat has been established, and as a result a greater degree of stability has been accomplished in agriculture?

A. That is correct.

Q. I take it that this stability has been attained at a price for wheat that is at least reasonably satisfactory to the producers; is that correct?

A. It has been at a better price than we have had ordinarily, with some exceptions.

Q. Well, you would say it was a reasonably satisfactory price?

A. A fairly satisfactory price, considering the costs that we have had.

Q. Then would you not agree that there is a much greater opportunity now to place the transportation charges upon a different basis than there was in the earlier years when, as you say, there were wide fluctuations in price to be expected and the condition of agriculture was less prosperous than it is now?

A. No, I would not say that.

Q. You would not say that?

A. No.

Q. You think that there is no more opportunity under a condition of stability than there is under a condition of instability?



A. I think that agriculture and---

Q. To adjust freight rates?

A. Agriculturally, and perhaps generally -- we are very much concerned today about the stability of agriculture. Agricultural prices are on the skids. Returns were less in 1949 for agricultural products than they were in 1948, notwithstanding the fact that we had \$237 million of equalization payments and P.F.R.A. In 1950 already our agricultural products, the prices of many of them are lower. I only need to refer to the price of bacon. The export price of bacon last year was \$36, and this year it is \$29.50.

Q. But you are deriving some satisfaction in your brief from the fact that a condition of stability has been attained?

A. That is true.

Q. And you say that even under that condition of stability there would be no opportunity to readjust freight rates?

A. We would say that the opportunity is not favourable.

Q. Now, on page 4 you suggest -- I think it is in the previous paragraph -- that the producer pays the freight rate. Do the members of your organization ship feed grain to Eastern Canada?

A. Yes.

Q. And do they pay the freight rates on that grain?

A. They pay the freight rates to the head of the lakes and at the moment the Government pays the freight from there.

Q. So that the producer in that case does not pay all of the freight rates by any means?

A. He is not paying all the freight rates. The Government sees fit as a result of a national economy to pay the



freight rates from the head of the lakes to Eastern Canada.

THE CHAIRMAN: Q. What do you say?

A. The Government sees fit in the interests of the national economy to pay the freight rates from the head of the lakes to Eastern Canada on feed grains.

MR SPENCE: Q. Now will you turn to page 5? In the middle of the page you have a sentence that begins:

"The repeal of the Crow's Nest agreement - would in effect take this degree of permanency out of the considerations and might subject transportation costs to marked fluctuation from time to time as the Board of Transport Commissioners deemed equitable in regard to transportation . . ."

THE CHAIRMAN: Tell me where that is, Mr. Spence.

MR SPENCE: Right in the middle of page 5, my lord. It starts:

"The repeal of the Crow's Nest Pass Agreement . . ."

Q. Now, Mr. Marler, I presume you would agree, as other witnesses before this Commission have agreed, that the transportation charges on grain from the point of origin to Fort William are only a small part of the total transportation costs to the European market?

A. I really do not know what the transportation cost is from Fort William to Liverpool, you see.

Q. But you would not say that the rates from the point of origin to Fort William were more than a part, shall we say a small part, of the total transportation costs for the whole distance to the European market?

A. No, I said I did not know, but I would not say that the transportation cost from my farm to Fort William is a small part either.

Q. Well, would you agree that in respect of the transportation charges beyond Fort William, and particularly





the ocean rates, there is no fixed and unchangeable level of rates?

A. I do not know.

Q. Well, do you know of any statute or any limitation upon the ocean rates?

A. No, I do not. I have not studied ocean rates at all; that is out of my field.

Q. Well, you suggest that if that portion of the total transportation charges which is now controlled by the Crow's Nest Pass legislation were under the jurisdiction of the Board, transportation costs would be subject to marked fluctuation from time to time?

A. Well, I would not go that far; I would not know.

Q. Then you would not suggest---

A. We are afraid they would not be subject to the same fluctuations as far as our prices and our yields are concerned.

Q. Then what you would favour is fluctuations in the---

A. No, we do not. We have pointed out in the brief that this adds a degree of permanency in arriving at long-term planning and long-term contracting and arranging long-term agreements.

Q. Then which do you want, a stability of rates that will allow you to plan for a long distance in the future or rates that are fixed regardless of whether the value of the product goes up and down?

A. We prefer the rates as they are now, where we know, have every reason to believe at least, that they are going to be permanent, be stable, and that we can successfully arrive at agreements for a long period ahead on that basis.

Q. What you want is not rates that go up and down, but rates that stay down?

A. Well, we do not want fluctuating rates.



Q. Now, at the bottom of page 5 and the top of page 6 you say:

"The Crow's Nest Pass Act specifically provides for continuance of this Agreement forever. While the agreement was suspended for a few years following World War 1 and while the agreement has been modified to some extent by the withdrawal of rates on certain commodities moving West from Port Arthur, this does not in any manner suggest that the balance of the agreement should be scrapped or that the jurisdiction of these rates should be transferred to any authority other than the Parliament of Canada. Nor does it, through experience resulting therefrom, in our opinion, justify the modifications made."

Am I to take it from this statement that you would favour a return to the full terms of the Crow's Nest Pass agreement of 1897?

A. Well, I pointed out previously that we specifically refer there to farm implements. That is the one that we are interested in.

Q. Would you have any objection if the other commodities were restored to the---

A. We have not given consideration to the other commodities. That is perhaps an error in our brief, the way we have phrased it there. It should have referred specifically to farm implements.

Q. But you would have no objection if the other commodities were restored to the influence of the Crow's Nest Pass agreement?

A. Well, perhaps I am not in a position to give a definite answer on that.

Q. Are you aware of the fact that the Canadian Pacific has pronounced itself ready and willing at all times to



stand by and implement the full terms of the agreement?

A. No.

Q. Later in your brief I think you are inclined to deplore the alterations that have been made in the agreement?

A. With regard to farm implements, yes.

Q. Then would you be prepared to support a move to restore the Crow's Nest Pass rates upon agricultural implements westbound and to remove the rates on grain from prairie points to the Pacific Coast for export from the Crow's Nest Pass level?

A. No, we would not.

Q. Or to restore the rates on grain products other than flour to the normal basis?

A. What do you refer to as normal basis?

Q. I mean to take them out from under the influence of the Crow's Nest Pass Act?

A. No.

Q. So that you would not favour a return to the agreement in its terms?

A. I think I have answered that question, sir. I said that we would favour it in regard to the farm implements, and I was not in a position perhaps at this time to say whether it should---

Q. In regard to farm implements but not to---

A. I would not say not to the others.

Q. Now, from page 6 to page 10 of your brief you discuss land grants made by British Columbia upon the building of the Crow's Nest Pass Line, and land and cash grants made in respect of the main line of the Canadian Pacific. I take it you would agree, Mr. Marler, that these grants in respect of the main line were the consideration for an altogether separate and distinct contract from that





relating to the Crow's Nest Pass line?

A. They were made previous, I understand, to the Crow's Nest agreement.

Q. And you are not suggesting that the grants in respect of the main line are legally bound in any way to the contract for the Crow's Nest Pass line?

A. I would not say they are legally bound, but we feel that the Crow's Nest Pass is now a part of the whole system and cannot be considered as any specific segregation of the whole system.

Q. What justification have you for the statement at the bottom of page 10, that if the Crow's Nest Pass agreement is found untenable the land grants both in respect of the main and Crow's Nest lines should revert back to the Government?

A. Well, we think that if the company finds that it cannot carry on on the basis of the Crow's Nest Pass agreement and asks its repeal, then they should ask the Government to give them another deal or take over certain responsibilities in regard to the national interest, and in lieu of that, in lieu of the company finding themselves in an impossible position, they should revert back these assets, and then perhaps they would be in a position to argue that just and fair rates be established on a cost-plus basis; but so long as these assets remain in the hands of the company and the revenues continue to arrive from those assets as a major part of their undertaking, we feel that they must be a consideration in arriving at freight rates.

Q. Then what you mean is that, although these two contracts are not legally bound up together at all, if one of them is opened up the other one should be opened up and a whole new deal made; is that it?



A. We are not suggesting that. We think the move is on the company, if they find their position impossible.

Q. Now, toward the bottom of page 11 and running over on to page 12 you refer to the recommendations from the report of the special committee on farm implement prices set up by the House of Commons in 1937. Can you tell me whether these recommendations were in fact implemented by Parliament?

A. I do not think they were, all of them, no.

Q. Now, I notice that item 4 of the recommendations at the bottom of page 11 is:

"That freight rate increases have contributed to the increase in the price of farm implements."

Can you tell me what freight rate increases are referred to in that statement, because my information and my recollection from a recent case before the Board of Transport Commissioners is that there were no increases whatever in the rates from Eastern Canada to the west on farm implements from about the year 1921 until the 21% increase went into effect in April 1948?

A. Well, I assume that they refer to carload lots of farm implements. As I stated previously, it is my understanding that under the Crow's Nest Pass agreement the rate from Ontario to Alberta on carload lots of farm implements was \$1.25½ per hundred pounds.

Q. In what year?

A. 1913.

Q. 1913?

A. I am not sure of the year.

MR STEER: Under the Crow's Nest agreement.

THE WITNESS: Under the Crow's Nest agreement, until that was changed in what? 1925?

MR STEER: 1925.

THE WITNESS: Yes.

(Page 19726 follows)



MR. SPENCE: Q. There was a substantial reduction, I think you will find, in the rates on agricultural implements in 1919, Mr. Marler, and possibly, subject to some increase in 1921 when other rates were increased, there was no increase from that time until the increase of 1948 in rates on farm implements.

A. My understanding is that the rates from Toronto to Calgary under the Crow's Nest Pass Agreement was \$1.25½ per hundred pounds of carload lots of farm implements, and in 1937 it was \$1.66½ on the same basis. That is in the Report of the Farm Implements Prices Special Committee, Session 1937, House of Commons, Report No. 20.

Q. My information, then, you would say, is not correct? That is, the information that these rates, while they were originally under the Crow's Nest Pass Agreement, later (I think in 1918 or 1919) reverted to the sixth class rates?

A. I have got my information - -

Q. And then were reduced below the sixth class rates and have remained at that reduced level below sixth class rates until the present time?

A. My information is from the Report that was submitted by the Special Committee.

THE CHAIRMAN: Mr. Spence, on page 11 Mr. Marler gave us certain rates on farm implements. Are you questioning the figures he gives us there? He showed an increase from \$1.25 to \$2.30. Are those figures not right?

MR. SPENCE: I suggest that they are not right, my lord, but I would like to check them.





THE CHAIRMAN: Which is not right, the \$1.25 or the \$2.30?

MR. SPENCE: I suggest that according to information I have at the present time and according to my recollection from the agricultural implements case before the Board that took place last year, the rates were reduced in 1919 and have not been increased since except in the course of general - -

THE CHAIRMAN: Reduced from what in 1919?

MR. SPENCE: Reduced from the normal sixth class rate. I cannot say what the sixth class rate was to any particular point at that time.

THE CHAIRMAN: If these figures are not admitted they should be cleared up, because we have taken them down as being exact, you see.

MR. SPENCE: Well, I would like to look into that further, my lord, and perhaps say something further after I have a chance.

Q. Your suggestion is then, Mr. Marler, that the same rates should be charged on agricultural implements as were charged in 1897?

A. We believe that it would be in the best interests of the general economy of Canada if that were done.

Q. Now, do you go the next step farther and say that you should pay the same prices for agricultural implements as you paid in 1897?

A. No, I think there are other costs there that perhaps could not be dealt with on the same level.

Q. So that so far as the price of the commodity is concerned you are quite prepared to acknowledge that



that should go up but not the freight rate?

A. Well, there are various different companies manufacturing farm implements, and I think perhaps it would be very difficult to go into that field and much more trouble to work out than with freight rates.

Q. You think it would be more difficult to establish that the railways costs have increased than that the implement manufacturers' costs have increased?

A. No, but as far as I know the implement companies have not had the other considerations that the railway companies have.

Q. Now, on page 12 Item 6 at the top of the page says:-

"That the matter of freight rates on farm implements should receive immediate attention with a view to restoring lower rates thereon".

And that is one of the recommendations of this Special Committee on farm implement prices?

THE CHAIRMAN: Where is that, Mr. Spence?

MR. SPENCE: At page 12 at the top of the page, Item No. 6, my lord.

THE CHAIRMAN: Oh, yes.

MR. SPENCE: Q. I think you said a moment ago that Parliament took no action in respect of that recommendation?

A. No, I didn't say that.

Q. So far as you know, I think you said.

A. No, I said I hardly thought that Parliament had carried out all the recommendations of the Implement Committee.



Q. Well, did they carry out that recommendation?

A. I don't know.

THE CHAIRMAN: As a matter of fact then, what was done about that by Parliament?

MR. SPENCE: Nothing my lord, as far as I know. You are aware perhaps that the Board of Transport Commissioners has itself up to the present time held the agricultural implement rates at a level so low that the Chicago manufacturers are able to ship through Windsor and Toronto and Sudbury and Fort William to the west more cheaply than they can ship in a direct line from Chicago to the Canadian prairie?

A. No, I am not familiar with that.

Q. Now, in some sections of your Brief, you suggest that the railway has reaped various benefits from the construction of a Crow's Nest Pass line in the development of the resources that were made accessible by the construction of that line. However, at the bottom of page 13 you say that the company itself was anxious and apparently prepared on its own initiative to extend its lines over this area. That being so, you would admit, wouldn't you, that regardless of the Crow's Nest Pass Agreement, the railway company would have obtained the same benefits from the natural resources in any event, and that the fact that the Agreement was made did not give the company any extra advantages in this respect that it would not otherwise have had by constructing the line itself?

A. No, I would not say that.

THE CHAIRMAN: Are you talking of page 13, Mr. Spence?





MR. SPENCE: At the bottom of page 13, I think it is the last clear sentence on the page:-

"Because of these resources the Company itself was anxious and apparently had been prepared on their own initiative, to extend their lines over this area."

THE CHAIRMAN: Well, what about that statement?

MR. SPENCE: Well, I was asking Mr. Marler whether the benefits that accrued to the Railway Company by opening up the Crow's Nest Pass district would have accrued in the same way whether the Railway Company built the line with the agreement or without the agreement.

THE CHAIRMAN: Yes, but the point is, the Company did not build it without the agreement. The Company made the agreement in order to build it, isn't that the fact?

MR. SPENCE: The Company made the agreement to assist in the building of the line, yes, but Mr. Marler's Brief says that the Company was prepared on its own initiative to build the line, and all I am suggesting is - -

THE CHAIRMAN: We have had before us certain reports of the directors of the Company to their shareholders in those years 1896 and so on.

MR. SPENCE: Yes, my lord.

THE CHAIRMAN: Do they show what the Company had in mind then? We had them here the other day I think, Mr. Sinclair.

MR. SINCLAIR: Yes, definitely these reports show, my lord, that the Company had commenced building



the line and had expended some, I would say, considerable sum on its construction prior to the execution of the Agreement in 1897.

THE CHAIRMAN: Yes, well, the reasons for building the line in the first place and secondly for making this contract with the Government, are set out in these reports by being said, for instance, by the President of the Company.

MR. SINCLAIR: Some of the reasons, yes.

THE CHAIRMAN: We have these, haven't we, in evidence?

MR. SINCLAIR: Yes, some of them my lord.

THE CHAIRMAN: We have the reports, we have the full reports.

MR. SINCLAIR: I think that all the reports are part of the record in one of the rate cases and that this would make them all part of the record here.

MR. MacPHERSON: The annual reports?

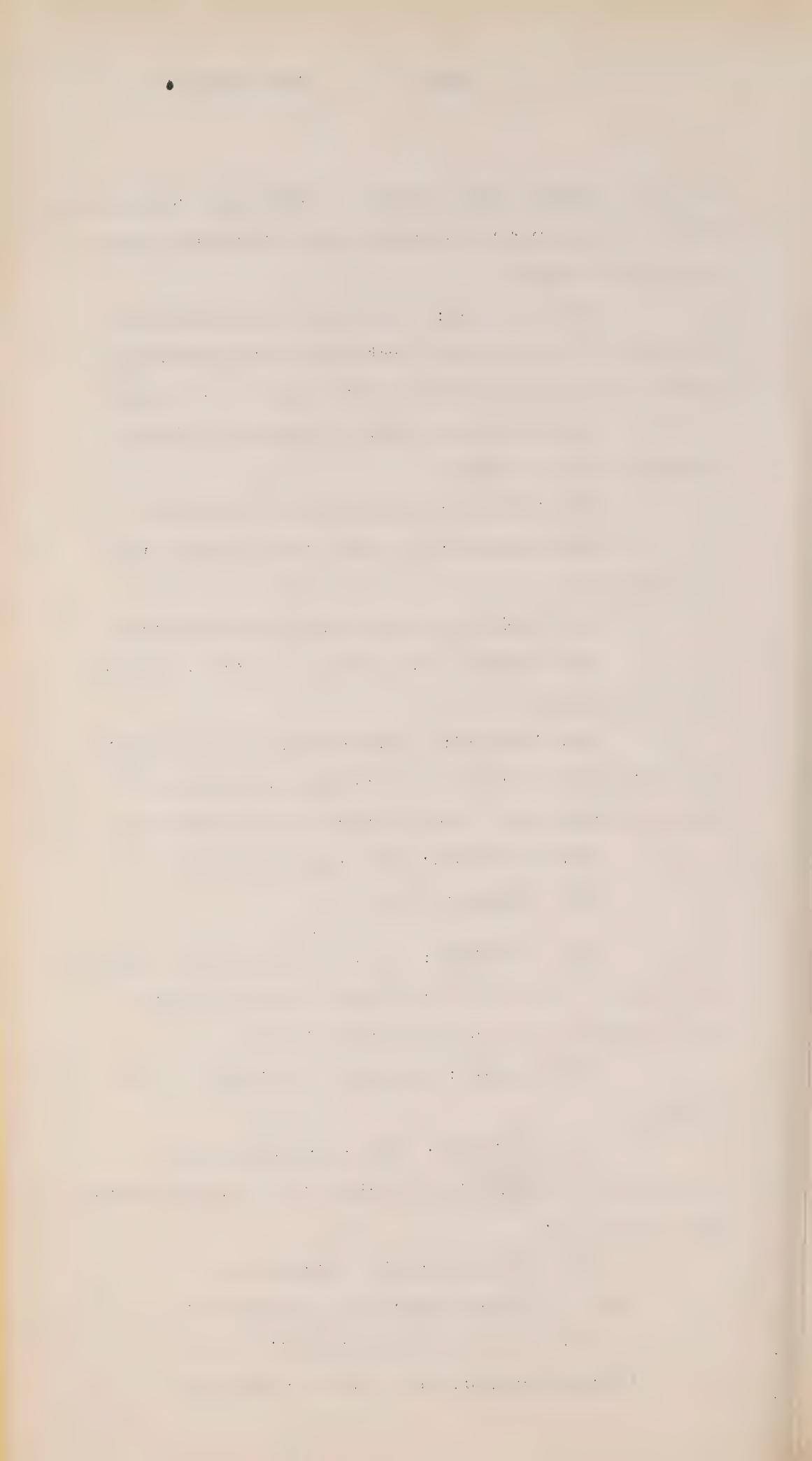
MR. SINCLAIR: Yes.

MR. MacPHERSON: Yes, I think all the reports were filed in the 30 Per cent Case, and we referred particularly to the annual report of 1896.

THE CHAIRMAN: Yes, that is the one I have in mind.

MR. MacPHERSON: The concluding words in the report of 1896 of the Directors to the shareholders read as follows:-

"The interests of the country at large are so much concerned in the question of a Crow's Nest Pass Railway, that your directors confidently expect reasonable



assistance at the hands of the Dominion Government.

MR. SINCLAIR: Of course, my lord, that was said, and if there is any comfort in it to Mr. MacPherson he can take it as a development, but there is one historical fact that I think may not have been pointed out here, and that is that the railway west of the boundary - -

THE CHAIRMAN: West of the boundary - -

MR. SINCLAIR: Yes, west of the boundary of Alberta and British Columbia, was built under the charter of the B.C. Southern and those other companies and not under the actual Crow's Nest Act. The Canadian Pacific arranged with those companies which they owned and controlled, to build the railway. That is a matter, my lord, that I would like to deal with in argument. I don't want to go into history because it is voluminous on this subject and we could be here for days talking about history and putting it in its correct perspective; but I think there are a few salient facts that might be helpful. I would be glad to answer any questions when I am dealing with that point.

MR. MacPHERSON: And I will be glad to deal with it in argument.

MR. SINCLAIR: I am sure you will.

MR. MacPHERSON: I will be glad to deal with it, but I might point out now, that in sub-section (h) of the Crow's Nest Act it says:-

"If the Company or any other company with whom it shall have any arrangement





on the subject, shall by constructing such railway....."

indicating that connection with the B.C. Southern to which my friend has referred.

MR. SINCLAIR: I agree with that. The whole situation was known, there was nothing that was not disclosed, it was all there.

MR. SPENCE: I have no more questions for Mr. Marler.

THE CHAIRMAN: Does anybody else wish to question Mr. Marler? Well, thank you, Mr. Marler.

MR. COVERT: The next Brief is the joint submission of Edmonton and Calgary Chambers of Commerce, the Corporations of Calgary and Edmonton. The counsel is Mr. C. W. Clement of Edmonton.

THE CHAIRMAN: Just a minute until we get the Briefs. We have the Briefs?

MR. COVERT: Yes, sir. Mr. Chairman, I understand that Mr. Clement is not calling any witnesses, he is just presenting the Brief himself.

THE CHAIRMAN: All right, Mr. Clement.



MR. C. W. CLEMENT - CALLED

MR. CLEMENT: My lord, I should perhaps make it clear at the outset that I am not appearing here with any special fund of knowledge or in an expert capacity, but more in an argumentative capacity. The Cities and Chambers of the Cities of Calgary and Edmonton are of the opinion that the grain rates vitally affect the municipalities and business men of Western Canada and indeed throughout Canada although perhaps more directly in Western Canada. The effect in Western Canada of the grain rates must necessarily be almost as direct and immediate on the business men and the municipalities as it is on the farmers themselves. It is for this reason that the Cities and Chambers felt they ought to make a representation to the Commission and to join in the protest against proposals affecting the grain rates.

Now, sir, I understand that this submission has been read and that in any event it is desirable that it be taken as read in the interests of saving some time. I would therefore propose, with your approval, not to read but perhaps to make two or three observations on matters arising out of it.

THE CHAIRMAN: As you go along, show us what part of your Brief you are commenting on.

MR. CLEMENT: Sir, it is rather more of a general comment.

THE CHAIRMAN: All right.

(Brief follows)



THE SUBMISSION OF THE EDMONTON CHAMBER OF COMMERCE, THE  
CALGARY CHAMBER OF COMMERCE, THE CITY OF EDMONTON AND  
THE CITY OF CALGARY, TO THE ROYAL COMMISSION ON  
TRANSPORTATION IN THE MATTER OF THE CROW'S NEST PASS  
RATES ON GRAIN AND FLOUR

The Chambers of Commerce of Edmonton and Calgary and Cities of Edmonton and Calgary, are vitally interested in the welfare of Alberta agriculture. No one in Western Canada can be oblivious of the fact that grain growing is the basis of our economic well-being. We as business men have first hand experience of the close relation between agriculture and the other sectors of the economy. Our interests are in a broad sense, identical.

We appear before this Commission conscious of this close relationship to add our protest to those of the farm organizations, other business groups, and the provincial governments of Alberta, Saskatchewan and Manitoba, against any suggestion that the present freight rates on export grain be altered. The submissions of the Canadian Pacific Railway Company to this Commission contain a direct attack against the grain rates in Western Canada which have been in effect for fifty years. This is a matter of added concern to the people of Alberta who pay for the freight hauls on grain.

The basis of the rate structure on which grain for export moves from the Western Prairies to Vancouver and to the head of the Lakes was established in the year 1897 when the Dominion Parliament passed "an act to authorize a subsidy for a railway through the Crow's Nest Pass". This act empowered the Governor-in-Council to grant a subsidy to the Canadian Pacific Railway Company towards the construction of a railway from Lethbridge through the Crow's Nest Pass to Nelson.

In return for the subsidy mentioned above plus a virtual rail monopoly in parts of Southern Alberta and





British Columbia, the C.P.R. granted certain rate concessions. Section 1 (d) of the Agreement provided for reductions of from 10% to 33 1/3% in the general rates that the C.P.R. then charged upon certain classes of merchandise west bound from Fort William and all points east of Fort William to all points west of Fort William. These rates were to be the new maxima and were to come into effect on January 1st, 1898. The commodities included in this part of the Agreement were green and fresh fruits, coal oil, cordage and binder twine, agricultural implements iron, wire, window glass, paper roofing felt, paints and oil, and livestock.

Another rate concession was made on grain and flour. Section 1 (e) provided that there should be a reduction in the C.P.R. rates and tolls on grain and flour. This reduction was to be 3¢ per hundred pounds from all points on the C.P.R. main line branches and connections west of Fort William to Port Arthur and Fort William and all points east. The rates were to be reduced by one and one-half cents per 100 pounds on or before September 1st, 1898 and by another one and one-half cents per 100 pounds on or before September 1st, 1899. These reduced rates were to be the maximum rates chargeable from the points mentioned in perpetuity. The Statute required the agreement on the part of the Company to provide "that higher rates than such reduced rates or tolls shall be charged after the dates mentioned on such merchandise from the points aforesaid."

From 1898 when these rate reductions came into being till March 1919, the rate concessions proved to be of negligible importance. The period 1898 to 1918 may be characterized as one in which, firstly, the Crow's Nest maxima were extended to all C.P.R. lines as they were completed. Secondly, it was a period in which rates



dropped below these Crow's Nest maxima in practically all cases, due to competition, government agreements with competing companies, and perhaps also to the increasing efficiency of the railways, or perhaps to the force of public opinion. During this period, the Crow's Nest rate structure became thoroughly imbedded in the economic fabric of the Prairie Provinces, the rates on grain particularly being of fundamental importance as a development factor in the growth of the western wheat economy.

From February 1918 until the latter part of 1922, the grain rates were above the statutory maximum provided as a result of the Agreement. In 1922 the Committee of the House of Commons took evidence regarding the Crow's Nest Pass Agreement and the effect that the Agreement had had upon the grain rates, and as a result of their deliberations the government amended the Railway Act so as to provide for a further delay in the coming into force of the rate provisions regarding the twelve selected commodities. The government did not follow this procedure in connection with the grain rates and they were returned to their statutory maximum and from which they have not departed since.

In 1925, after further discussion, the provisions regarding the twelve selected commodities were permanently removed, and in 1927 the Board of Transport Commissioners extended the Crow's Nest grain rates to the Pacific Coast for export.

The present situation is that the present export freight rates on grain and flour are the result of the Crow's Nest Pass Agreement as it was amended by legislation in 1925. The C.T.R. at the present time is advocating the removal of these rates from the statute, apparently to permit them to seek their "proper level"



which presumably they consider to be higher than the rates currently charged. In support of their contention the C.F.R. have presented certain arguments which they have summarized at page 138 and 189 of Part 1 of their Submission. In summary the C.F.R. says:

- "1. In fairness and equity, these rates should be regulated in the same way and by the same tribunal as rates on other traffic.
- "2. The level of grain rates in Western Canada is less than half that for comparable movements of grain in the Western United States.
- "3. Under the present conditions, the Crow's Nest level of grain rates is not compensatory.
- "4. If, as a matter of national policy, the grain growing industry in Western Canada should at any time require to be subsidized, the subsidy should be paid directly to the industry by the Government of Canada out of general tax monies.
- "5. The price of grain in Western Canada has more than doubled since the present "Crow's Nest" basis of rail freight rates was established. It is sound economics that these rates be permitted to find their proper level in accordance with changed conditions.
- "6. The Crow's Nest rates are a pure historical survival. They are not





related either to the cost of service nor to the value of service. Changes which have occurred since they were introduced have made them totally obsolete and their effect upon the railways and upon the rates charged on other traffic makes it dangerous to retain them."

It is the submission of the Chambers of Commerce of Edmonton and Calgary, the City of Edmonton and the City of Calgary that these reasons provide insufficient and inadequate grounds for a demand to have the grain rates removed from the statute.

Reason No. 1 is simply a plea by the C.P.R. to have their obligations under the Crow's Nest Agreement as amended absolutely removed. This plea ignores the fact that the C.P.R. made an Agreement for which they received valuable consideration. For them to come forward at this time with the request to have their obligations removed is a thinly-veiled attempt to keep the advantages, and be rid of any disadvantages that the Agreement gives them. When the original Agreement was made it certainly must have been in the minds of the parties to that Agreement that general increases in future might put the grain rates at a figure higher than the statutory maxima. If at the first opportunity the maxima are to be removed on the excuse that wages and prices have generally increased, it is quite apparent that the statutory protection is of no value at all. If it was the intention of the contracting parties to remove the effects of the Agreement as soon as it became apparent that the Agreement offered some protection, it



would indeed seem a very odd state of affairs.

The C.P.R. has also evidenced a good deal of concern for people other than those parties to the contract who, in their words, have suffered as a result of the agreement. In particular they mention other railroads which have had to apply the Crow's Nest maxima to their grain charges, although of course these other railways were not parties to the original agreement. It is very interesting to find the C.P.R. so concerned about other railways and particularly interesting in light of the fact that the C.P.R. is the only railway which has come forward with any suggestion about removing the statutory level on grain rates. The Canadian National Railway has not made any submission in connection with the grain rates.

Point 2: Because export grain rates in western Canada are about half the domestic rates in the U.S., it cannot be urged that the Canadian rates should be removed from the statute. Comparisons between the United States and Canada can only be significant if all factors, or at least the major factors, are similar. This is not here the case. The American farmer is protected by huge government expenditures on price supports. The Canadian farmer does not receive government-supported prices for his wheat but is left to the export market entirely. In addition, the Canadian farmer is thousands of miles from his market. The American spring wheat farmer is in close proximity to his. In addition to this, the American farmer gets his farm requirements cheaper than does the Canadian farmer situated on the other side of the border. The very significant effects of the tariff on farm costs in Western Canada cannot be ignored when any comparison between the American and Canadian situation is to be made.



These facts point to the conclusion that no significance whatsoever can be attached to rate comparisons between Western Canada and the spring wheat area of the United States.

Point 3: The Commission has already ruled that the compensatory nature of the grain rates will not be considered. As businessmen, however, we have always thought it peculiar that the man who makes a deal in which he gets certain things and agrees to give others, should come forward and attempt to break that deal in part when it is alleged that his obligations have possibly become more onerous than he expected, but without being prepared to surrender any of the privileges and advantages he received under the agreement. We say that if the C.P.R. wants to break the Agreement, it can do so only when the balance sheet of the advantages and disadvantages has been drawn up. As it is today, we conceive the 1925 amendment to the Crow's Nest Agreement as a salve. We submit that before removal of the Crow's Nest rates should be considered there should be an accounting of the advantages which have accrued to the C.P.R. and that no change ought to be entertained without a judicial weighing of the facts.

Point 4: This point is directly related to the one above. Subsidy does not enter the discussion of the Crow's Nest Pass rates, because of the fact that their compensatory nature is not here to be considered.

While recognizing the fact that the marketing of grain is a matter of national policy, we regard as unproven any contentions that the present export rates on grain constitute a subsidy to the Western Canadian farmer. In the original Agreement it was the Canadian Pacific Railway that received the subsidy and there was





no indication that the establishment of statutory rates contained any element of subsidy. It was rather the case that the statute existed to protect the grain producer from too high charges. The value and profitability of the grain traffic to the Canadian Pacific Railway has been undeniable. The statutory limitation was to protect an area dependent upon foreign markets and rail transportation. It has served its purpose admirably and continues to do so. In so doing it has been of benefit both to the grain growers and to the railways.

Point 5: As to the C.P.R. contention that the price of grain has more than doubled since 1897, we would like to point out the following facts:

This statement is misleading, since it carries the implication that grain prices have risen steadily from 1897. The C.P.R.'s own EXHIBIT, page 100 of the appendix to Part 1 of its Submission indicates that from 1897 to 1918, when the Agreement was in effect, in eight years the average price of wheat at Port William was higher than in the 1897-1898 crop year, as against the twelve years when it was lower. For the period of 1918 to 1922 the Crow's Nest grain rates were not in effect, but in 1923 to 1948, in sixteen years the price was higher and in ten years the price was lower. We cannot accept the assurance of the C.P.R. that the present level is permanent or that the cycle of grain prices has been terminated.

We also would point out that there is normally a correlation between good crops and low prices, so that the prosperity or ability to pay of the Western farmer is not measured by mere comparison of changes in price levels.



As to the contention that is is "sound economics that these rates be permitted to find their proper level in accordance with changed conditions", we would point out that this ignores the fundamental reason for the statutory rates on grain; reasons which the Canadian Pacific must have fully recognized and accepted at the date of the original agreement.

Point 6: As to the final C.P.R. point that the rates are a pure historical survival - we submit that this is a surprising contention to adopt with regard to an agreement in perpetuity, which by its very definition must be in one sense an historical survival. They are in fact the direct expression of National Policy which is very far from being considered obsolete by the people of Western Canada.

All of which is respectfully submitted by,

THE EDMONTON CHAMBER OF COMMERCE,  
THE CALGARY CHAMBER OF COMMERCE,  
THE CITY OF EDMONTON,  
THE CITY OF CALGARY.



MR. CLEMENT: The fundamental position taken in the submission is that the Agreement and Statute of 1897 constituted instruments of public policy of the Government of Canada, and that public policy was reaffirmed by Parliament in 1925 after a period of disturbances and inquiry and consideration. An attack on the agreements in the 1925 Statute of necessity involves the public policy. It is respectfully submitted that there should be no recommendation in respect of the public policy until it has been demonstrated by strong evidence that it is no longer in the public interest to maintain it. Until that time the grain rates should continue to be a condition upon which, with other considerations, freight rates on other commodities are determined. .

If this view is sound, then it becomes desirable to determine what was the national policy as reaffirmed in 1925. Otherwise it would not be possible to determine when its purpose has been served.

The history of the matter indicates that one purpose was the fixing of a stable grain rate without relation to any other factors, whether affecting the farmers or the transporters. I think, sir, that has been amply dealt with in the past four days. However, with deference to those who have made a fuller study of the matter than I have been able to, I venture to suggest also that the Government of the day had in mind the development of Western Canada and of an economically sound agricultural area which would complement the industrial areas of Eastern Canada.





That would mean the creation of a purchasing power of the volume and stability to afford a domestic market for Canadian industry which could not compete favourably in the foreign markets, that is to say a volume and stability of purchasing power in relation to Canadian manufacture.

Stability of purchasing power in relation to Canadian manufacture cannot be obtained in any satisfactory measure when the purchasing power is derived from the sale of grain on world markets. The factors which affect the farm income derived from world markets do not act equally, or perhaps even at all, on domestically-sold industry, that is to say, tariffs, world supply and demand, currency variations. Such stability comes closer to realization when the purchasing power is also derived largely from domestic rather than foreign sources, as is the case in the United States.

(Page 19736 follows)



Then factors of inflation and deflation react in the same measure on both areas and have a correlated effect. I therefore suggest that the national policy then laid down will not have been served until grain ceases to be predominantly export in character.

I would also like to make an observation on the position of the Canadian Pacific Railway in relation to this national policy. It voluntarily and for valuable consideration entered into the agreement of 1897. A part of the benefit consisted in the increasing freight west-bound created through the operation of the policy. I submit that the proper view of the agreement is not that it thereby became bound to perform some particular terms, but that it voluntarily contracted itself into a status of an instrument of public policy. It committed itself to that position for valuable and continuing considerations. It now seeks to free itself of that status. I suggest that no serious attempt to that end should be made except to Parliament. It is only a body responsible directly to the people who can or ought to determine what is for the good of Canada.

Now, I think, sir, those are all the observations that I have to make. Perhaps my friends wish to ask me some questions.

THE CHAIRMAN: Does anybody wish to ask anything of Mr. Clement about his presentation?

MR SPENCE: I would like to ask some questions, Mr. Chairman.

<sup>5</sup>  
CROSS-EXAMINED BY MR SPENCE:

Q. Mr. Clement, I had a number of questions to ask you on various points in the brief that you presented to the Board, but I will try to cut them as short as possible, so we can perhaps finish before the adjournment. On page 2



of your brief you set out the six points in which the Canadian Pacific has summarized its submissions on Crow's Nest Pass rates. Having done so, you state:

"It is the submission of the Chambers of Commerce of Edmonton and Calgary, the City of Edmonton and the City of Calgary, that these reasons provide insufficient and inadequate grounds for a demand to have the grain rates removed from the statute."

Can you say what grounds you consider would be sufficient and adequate for such a demand?

A. Mr. Spence, as an individual I am afraid I could not. The position taken is that adequate and proper considerations can only be determined by Parliament, who instituted the policy in the first instance.

Q. But you are saying that these are inadequate reasons. Is it your position that even if all of these grounds are fully proved they will not form a sufficient reason for removing the grain rates from the present statutory control?

A. Yes, that would be my view.

Q. Now, let us take one of them. Take item 3, which reads:

"Under the present conditions, the Crow's Nest level of grain rates is not compensatory."

Now, we have not been permitted to go into the question of whether they are or are not, but if that was proved would you say that that would be a proper ground for an amendment of the statute?

A. I understand your question, Mr. Spence, to mean this, that the grain movement taken by itself ought to be self-supporting.

Q. No; my question is merely based on the wording of the point, that under the present conditions the Crow's Nest





level of grain rates is not compensatory. Now, regardless of how it is found that the compensatory nature should be calculated, if it is found that in actual fact the grain rates are not compensatory, do you say that that would still not be a proper ground for an amendment of the statute? In other words, do you think that any statute of this country should compel a company to carry on business at an out-of-pocket loss?

A. On the over-all picture? Is that what you mean?

Q. I mean at an out-of-pocket loss -- all right, on the carriage of the grain?

A. Well, now, that is a little different.

Q. Yes; all right, I am changing it.

A. I want to understand what you are getting at, Mr. Spence.

Q. I am changing it. Do you think that any statute should compel a company to carry any traffic at an out-of-pocket loss?

A. Yes, I think that has been done, and that there is justification for it being continued. Mr. Spence, it seems to me in this case that there is some similarity to what is known in merchandising as loss leaders.

THE CHAIRMAN: Q. Known as what?

A. Loss leaders, sir. Assuming -- and I understand that there is very considerable dispute on the point -- assuming that grain taken by itself does not yield revenue sufficient to meet its operating expenses, nevertheless that cannot be taken alone as the factor for determining whether something ought to be done about it.

MR SPENCE: Q. A loss leader, as you call it, in merchandising is something that is put in voluntarily, if it is permitted by law, it is put in voluntarily by the store?



A. For the sake of revenues gathered from all other sources, yes.

Q. Now, do you say it is a proper thing to have a law that compels, for instance, a department store to sell some of its goods at less than cost?

A. Well, no, no. It is a voluntary act, but then this was instituted in voluntary acts.

Q. But the Crow's Nest Pass Act is not a voluntary act on the part of the Canadian Pacific at the present time, is it?

A. No, but then my position on that, Mr. Spence, is that the voluntary act on the part of the C.P.R. was in permitting itself to become an instrument of public policy. Now, there are some servitudes undoubtedly attached to assuming a status of that sort; those servitudes were dealt with and perhaps relieved in 1925, but from a legal point of view it is difficult for me to say that the 1897 agreement constituted an agreement as is known in law for the binding performance of one party and another of certain specific obligations. There was a public policy being fulfilled there, and the railway became voluntarily a party to that public policy. That is my view of it.

Q. Entered voluntarily into the agreement of 1897?

A. Yes. The fundamental part of which, as I have said---

THE CHAIRMAN: May I ask you here, Mr. Spence, going back to 1897, as you have done, at that time the company had a particular rate in effect for the carriage of grain?

MR SPENCE: Yes, my lord.

THE CHAIRMAN: And in consideration of what was given to it the company agreed to charge three cents less than that rate.



MR SPENCE: Yes, my lord.

THE CHAIRMAN: For all time. Is there anything now which would enable us to ascertain whether that three cents reduction from the prevalent rate left the compensatory rate to the company then?

MR SPENCE: Mr. Sinclair perhaps can answer that better than I can, my lord.

THE CHAIRMAN: I am not asking you to answer it right now.

MR SINCLAIR: No, my lord. I think that in the evidence and in the exhibits, the material that was filed by Mr. Jefferson, you will find sufficient to enable you to come to the conclusion that at that time it was a compensatory rate. I think there are a number of tests that lead you to that conclusion.

THE CHAIRMAN: That after reducing your rate by three cents you still had a margin of compensation.

MR SINCLAIR: Yes, my lord.

THE CHAIRMAN: Left to you when you made this bargain.

MR SINCLAIR: Yes, my lord.

THE CHAIRMAN: You think the evidence shows that.

MR SINCLAIR: I think it is a very easily made inference from the evidence.

THE CHAIRMAN: Well, we do know this, that between 1903, I think, and 1918 it must have been a compensatory rate that was left to you, since you charged less than it during those years.

MR SINCLAIR: Well, I think that some of the most conclusive evidence is the fact that the rate did go below the Crow's Nest level.

THE CHAIRMAN: You maintained them there all the time until June 1918.





MR SINCLAIR: Yes; and I think the most conclusive evidence of all possibly is this, that with the percentage of traffic that was grain that was moving on the Canadian Pacific at the time when the agreement was made for the number of years afterwards, if it was not compensatory the company would have gone bankrupt.

THE CHAIRMAN: Well, I have got the outlines of your presentation on that. Now, today your position is that you wish to be liberated from the statute, and you wish to be able to go before the Board, and then you feel confident that you could demonstrate to the Board that these rates are now non-compensatory. You have a lot of evidence there; you have gone to a lot of cost inquiry to find that out.

MR SINCLAIR: Yes, my lord.

THE CHAIRMAN: That is the first thing. You certainly would urge upon the Board the necessity of increasing those rates.

MR SINCLAIR: Oh, definitely.

THE CHAIRMAN: That is the first thing you would do.

MR SINCLAIR: Definitely, my lord, most definitely.

THE CHAIRMAN: Then we get down to where we were an hour or so ago -- what considerations you would ask the Board to bear in mind in granting you your increase. You need not answer that now.

MR SINCLAIR: I think, my lord, that Mr. Spence will answer that during argument, and I think it will be helpful.

THE CHAIRMAN: You have gone over it many times.

MR SINCLAIR: Yes.

THE CHAIRMAN: Page 189 of your brief is full of notes I have taken each time we have gone over it; and we want to make very, very sure of just what the C.P.R. intends



the functions of the Board shall be if this statute is repealed.

MR SINCLAIR: I am very mindful, sir, and so is Mr. Spence, of the responsibility we have in trying to help you.

THE CHAIRMAN: And I refer you again to what was said, for instance, in the Duncan Report, when the Duncan Report quoted from judgments of the Board and statutes and sections of the statutes to show how the Board had so far circumscribed itself in dealing with the assessment of freight rates.

MR SINCLAIR: Yes.

THE CHAIRMAN: As long as we know before we stop this case this week just what the Canadian Pacific has in mind, without there being any doubt about it, in fairness to ourselves---

MR SINCLAIR: We will do our very best, my lord, to be of all the assistance we can.

THE CHAIRMAN: All right, go on, Mr. Spence.

MR SPENCE: Q. Now, Mr. Clement, you spoke of the voluntary act of the Canadian Pacific?

A. Yes.

Q. The voluntary act of the Canadian Pacific was in fact the signing of the agreement of 1897?

A. Yes, in contemplation of the statute which authorized it.

Q. And there have been rather major changes and extensions of the Crow's Nest Act rates since that time?

A. There have been changes, yes.

Q. And those have not been by any voluntary act of the Canadian Pacific?

A. ;I do not know. I do not know to what extent---

Q. Well, they have been by statute, haven't they?



A. Yes. I do not know to what extent the C.P.R. contributed toward the enactment of that statute; I have no knowledge of that, Mr. Spence.

Q. Now, as a lawyer, Mr. Clement, I would like to put this proposition to you in relation to the second paragraph on page 3. That paragraph refers to the advantages and disadvantages received under the agreement, and I would like to say at the outset that we rather strongly resent your suggestion that the Canadian Pacific is attempting to, as you say, break its deal or evade its obligations. I perhaps should repeat again, Mr. Clement, for your benefit and that of those whom you are representing here, that the Canadian Pacific has made it very clear that it is ready and willing at all times to stand by the letter and spirit of that agreement to the fullest extent as that letter and spirit are found in the agreement itself and have been interpreted by the courts.

A. Yes, I have heard that said, Mr. Spence. It might involve the Canadian Pacific Railway in as much trouble as anybody else if that were done.

Q. But that would not be any breaking of the deal, would it, or breach of faith? (No audible answer).

MR O'DONNELL: Q. The answer is No?

A. The answer is No, Mr. O'Donnell.

MR SPENCE: Q. Ignoring for the moment the language in which this second paragraph on page 30 is couched, I would like you to give me your opinion as a lawyer upon this problem. Supposing you were consulted by a client who was in the contracting business, and this client had made a contract with the City of Edmonton to lay a one-lane pavement on a street that we will call Main Street, and the consideration in the contract was say \$100,000, and the City had passed a by-law ratifying that contract, and then after the con-





tractor had started to work the City representatives came to him and said, "Oh, now, we have passed a new by-law, under which for the same consideration of \$100,000 you must build a two-lane instead of a one-lane highway on Main Street, and you will also have to pave all the cross streets running across the city" -- now, would you as a lawyer advise that client that he was bound by his contract to do that extra work?

A. Well, your question answers itself, Mr. Spence.

Q. What is your answer, then?

THE CHAIRMAN: Well, we will adjourn now, Mr. Spence.

---The Commission adjourned at 1:00 p.m., to meet again at 2:45 p.m.



Ottawa, March 30, 1950

AFTERNOON      SESSION

THE CHAIRMAN Mr. Spence, are you through with your examination?

MR. SPENCE: Yes, I have no further questions, my lord.

THE CHAIRMAN: Now do we proceed with argument?

MR. FRAWLEY: My lord, yesterday I said I would make a statement with regard to that controversial question of 1897 rates versus 1950 rates, and I was, and am, prepared to do that. My friend, Mr. Sinclair, is agreeable that he should proceed with his argument and I would not stop to interrupt his argument. I will say what I have to say on that question in the course of my argument.

MR. SINCLAIR: I will say what I have in answer to it in reply.

MR. O'DONNELL: Just before Mr. Sinclair starts I would like to make two corrections in the transcript. On page 19527 of yesterday's volume, No. 106, 5 times 185,000 makes 925,000 instead of 758,000 as is set out there. On page 19536 the word "your" at the end of the second line should be replaced by the word "the" -- "the demands...."

ARGUMENT BY MR. SINCLAIR

MR. SINCLAIR: May it please the Commission, I have been given the honour and responsibility of first addressing you on one of the most important matters before your Commission.

The subject of so-called Crow's Nest rates has a number of facets and Mr. Spence and I have divided the points which we wish to discuss. Broadly, the division will be that, with your permission, Mr. Spence will deal with the question of just and reasonable grain rates under established rate-making principles; the effect on the rate structure of having one segment of it rigidly fixed by statute, especially when that segment covers approximately



one-third of the Canadian Pacific Railway's traffic in Western Canada. Generally speaking, I intend to deal with the historical and economic aspects of the matter of rates on the Crow's Nest level.

Even a cursory examination of the history of the so-called Crow's Nest rates discloses one salient fact; the reluctance of Prairie interests to have an inquiry into, and discussion of, these rates on the merits, removed from pressures which tend to cloud the true effect of this unduly low segment of rate structure.

I think it is worthy of note that, when the Provinces requested that your Commission be constituted, they attempted to restrict the activities of your Commission so that you would "not be empowered to make any inquiry or recommendation which would derogate from the prescriptions contained in the provision to subsection 5 of Section 325 of the Railway Act." What I have just said is a quotation from paragraph 2 of the Memorandum of the Provinces submitted to the government and which is, in part, set out at page 8384 of the transcript.

The Dominion Government, however, did not accede to the demand of the Provinces and for, I say, good and compelling reasons, because it is obvious that the Government recognized rates at the Crow's Nest level were a problem on which they would have considerable difficulty securing all the facts and having a judicial inquiry into the situation in Parliament, or in a Parliamentary Committee.

As a result, therefore, the Canadian Pacific has been given the opportunity to present evidence to you on this important issue and ask for a recommendation that the proviso to subsection 5, Section 325, and subsection 6, Section 325 of the Railway Act be deleted and grain rates





placed under the jurisdiction of the Board of Transport Commissioners. As your lordship, stated,

at page 11074 that is in volume 58 of the transcript:

"There is no question" ---

I am quoting now --

"---about our powers; indeed I may say it is our duty to inquire into the question of this particular statute."

Now, the Canadian Pacific submissions on this matter of Crow's Nest rate level will be found at pages 151 to 189 of Part I of our submission, which is Exhibit 139-A; and also in the graphs, maps and tables to be found at pages 89 to 116 of the Appendix to Part I of the Canadian Pacific Submission, which is Exhibit 139-B.

I have put that on the record because I think our evidence is clear. It has made out, I submit, a powerful case. I may not be able to do it complete justice, but I know that your Lordship and your colleagues will give it the careful consideration that I know, and I think, it deserves.

In support of the written statement of the Company, Mr. Jefferson appeared before you and gave evidence on this issue. His direct testimony will be found commencing at page 15110 in Volume 74 and continuing through to page 15284 in Volume 75 and also at pages 15321 to 15324 in Volume 76. The Canadian Pacific deems itself extremely fortunate to have available to it an officer of the experience and ability of Mr. Jefferson. Mr. Jefferson's knowledge and judgment of freight rate matters is second to none. Even Mr.Frawley would be in agreement with me on that statement, and an American witness expressed it rather cryptically when, before your Commission, he referred to Mr. Jefferson and said: "He is the daddy



- 19748 -

Mr.Sinclair

"of them all on freight rates". I am sure you will give his evidence careful consideration and due weight.

The Canadian Pacific also called in support of its submissions Mr. P.C.Armstrong, the Economic Consultant of the Company. Mr. Armstrong's direct testimony will be found commencing at page 18037 of Volume 95, through to page 18248 of Volume 97. Mr. Armstrong has devoted many years to an intensive study of grain marketing and to the position of grain in the Western Canadian economy. That he is an authority upon the subject and entitled to the greatest respect, cannot be denied. Certainly everyone will agree that Mr. Armstrong has a deep and abiding interest and faith in Western Canada and the Western Canadian farmer. His evidence, I submit, is helpful in understanding what is, without doubt, a complex question.

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Why was there a Crow's Nest Pass Agreement?

The Provinces would like you to believe, and also some other Western interests, that it came into being as a part of the national policy on agriculture. I submit there is no real evidence in the record to support such a contention. The Canadian Pacific Railway by its charter has power to build branch lines from its main line, and before the 1897 agreement was executed the Company had commenced construction of the Crow's Nest line. No special act was required by Canadian Pacific to build a line through the Crow's Nest Pass. There is a special statute in regard to the Crow's Nest line, however, and this is because there were special terms imposed on account of a bargain the Company felt it was necessary to enter into at the time.

The Agreement of 1897 resulted in the Crow's Nest line being built earlier than it otherwise would have been. The Company, however, would have built it as soon as it had funds available to finance construction. This point is admitted in the Prairie Provinces' brief on the Crow's Nest in volume 104 of the transcript at page 19190. There is a Crow's Nest Pass Agreement because Canadian Pacific, on account of its arduous struggle in building the Canadian Pacific Railway, and opening up the West for settlement, was without sufficient financial resources readily available to it in 1897 to complete the building of the line which it had previously commenced.

The Dominion Government granted the Company a cash subsidy of \$3,400,000 odd. In return for this they drove a hard bargain. How hard a bargain it was has been amply demonstrated down through the years. Nevertheless, Canadian Pacific entered into a contract ---

THE CHAIRMAN: I wonder if you can tell us now,





Mr. Sinclair, whether Canadian Pacific interests at that time said that it was a hard bargain?

MR SINCLAIR: No.

THE CHAIRMAN: You are judging it now by looking back?

MR SINCLAIR: Yes; I do not think that the Government fully realized they were driving a hard bargain either.

THE CHAIRMAN: You mean that it has turned out to be a hard bargain.

MR SINCLAIR: That is right. As I say, nevertheless Canadian Pacific entered into a contract. They built a line of railway and are still prepared to carry out the other terms of the agreement in accordance with their true interpretation. I wish to emphasize that the Canadian Pacific is prepared to carry out its contract of 1897. I think that nothing could be made clearer than that.

THE CHAIRMAN: Do you mean that if the terms of the contract such as they were in 1897 could be re-instated that they would be prepared to carry on on that basis?

MR SINCLAIR: Yes, we are prepared to carry out our contract. If the other party to the contract feels that it should not be carried out and something else should be done then, of course, that is a matter for the two parties to get together on, but we, the Canadian Pacific, have always been and are today prepared to carry out this contract just as we are prepared to carry out any other contract that we have entered into.

THE CHAIRMAN: Is reversal of the original contract physically possible today?

MR SINCLAIR: With all the chaos and ---



THE CHAIRMAN: I would not call it chaos.

MR SINCLAIR: I adopt a word that has been used elsewhere, and the ill-effects that such a thing would bring about. I think it could be re-instated and carried out.

THE CHAIRMAN: You think it could be reinstated?

MR MacPHERSON: Could be?

MR SINCLAIR: Could be. It would have, as I say, a tremendous and deleterious effect on the Canadian economy.

COMMISSIONER ANGUS: What would its impact be on other rates?

MR SINCLAIR: Cashwise do you mean, Commissioner Angus?



COMMISSIONER ANGUS: I mean, would other rates have to be increased above their level?

MR. SINCLAIR: Well, you see, I would think that you would have to make quite a study to see how much traffic would move. I could not answer that question. I have not made a study; I do not know who has.

COMMISSIONER ANGUS: Now, put it in a form in which it can be answered. If you were taken up on your offer and you did carry out the bargain in those terms - -

MR. SINCLAIR: Yes?

COMMISSIONER ANGUS: And you found that the effect on your revenues was adverse, would you consider that you were entitled to go to the Board and ask that the adverse effect on your revenues should be compensated for by increasing other rates?

MR. SINCLAIR: I would say, Commissioner Angus, that we would go to the Government, the other party to the contract, and we would say to them:- "Here is the result of this contract"; and I think we would be told that they could not do anything about it. Then we would be faced with the proposition that you put forward, and that is, the company has another large contract that requires it to maintain and operate its railway efficiently forever, and that is set out in its latest pact. I think we would be bound to go to the Board and say to the Board:- "Here is our undertaking to Canada, here is what we must carry out. We must have rates to enable us to do it." That would be my answer, sir.





Now, we have heard something about the benefits received by the Canadian Pacific other than the cash grant, in connection with the building of this line in Southern British Columbia. In 1897 and for many years thereafter these assets were looked upon as a high risk gamble.

THE CHAIRMAN: What assets are you talking about?

MR. SINCLAIR: Oh, assets we purchased in Southern British Columbia.

THE CHAIRMAN: You mean mineral assets?

MR. SINCLAIR: Mineral assets, yes, and others, land. I say those were then considered and for many years after were considered, as a high risk gamble, and the Company took that on faith. I say they are irrelevant to this issue. I don't intend to weary you - -

THE CHAIRMAN: But would you tell us then what benefits you say did accrue to the Company out of the contract?

MR. SINCLAIR: Out of the contract?

THE CHAIRMAN: Well, you say you had these mineral acquirements which you say were then of very doubtful value.

MR. SINCLAIR: Yes.

THE CHAIRMAN: And should not be considered.

MR. SINCLAIR: Yes.

THE CHAIRMAN: What would you consider - -

MR. SINCLAIR: That the Company received?

THE CHAIRMAN: Yes.

MR. SINCLAIR: I suggest the Company received three - -



THE CHAIRMAN: In the first place, of course, you received the money.

MR. SINCLAIR: 3.4 million.

THE CHAIRMAN: Yes, but apart from that.

MR. SINCLAIR: Apart from that?

THE CHAIRMAN: Tell me, for instance, what do you think of this territorial railroad monopoly which you secured in that part of Canada, that we have heard a lot about as we have been going along?

MR. SINCLAIR: I say today, and indeed since 1888, the Canadian Pacific was not protected by having a monopoly of any area of Canada. Today Mr. Frawley's railroad can build into Southern British Columbia, if he can finance it and if he has the money.

MR. FRAWLEY: Not in Southern Alberta though.

MR. SINCLAIR: And in Southern Alberta.

THE CHAIRMAN: What railway are you talking about there when Mr. Frawley said - -

MR. SINCLAIR: The XY Railway. We have heard a lot of terms used about a monopoly - -

THE CHAIRMAN: Do you think it would be worthwhile for another railway to go into your territory?

MR. SINCLAIR: I don't know.

THE CHAIRMAN: Of course, physically they could do it.

MR. SINCLAIR: That is what I say.

MR. FRAWLEY: I am sorry to interrupt my lord, but my friend has mentioned my name and asked about my railway. The reason Mr. Sinclair does not like it is because they can be reduced, like the Great Northern out of Lethbridge. That is the sort of practical



thing I talked about.

MR. SINCLAIR: I hope, Mr. Chairman, that I am not going to have to be turning to answer Mr. Frawley in delivering this argument. He will have all kinds of opportunity to answer me.

MR. FRAWLEY: Now, my friend invited that, my lord. We could not leave that as "Mr. Frawley's XY Railway" in fairness.

THE CHAIRMAN: I think we were told there was some sort of secret non-interruption covenant entered into by counsel.

MR. FRAWLEY: I want to observe that.

MR. SINCLAIR: What he means is, he wants to try.

THE CHAIRMAN: You see, we have been told as we go along from time to time that the C.P.R. acquired a monopoly of all that territory by going in there.

MR. SINCLAIR: Yes.

THE CHAIRMAN: Now, it may be all right for you to say today: "Let others come along if they want to".

MR. SINCLAIR: They could have in 1897.

THE CHAIRMAN: Of course they could have, but they didn't as a matter of fact. What I want to know presently is, what have you to say in answer to that claim of a monopoly having been conferred upon --

MR. SINCLAIR: I say it is ill-founded.

THE CHAIRMAN: It is ill-founded? You are there alone ever since, aren't you?

MR. SINCLAIR: Yes, that merely proves we give very efficient service.





COMMISSIONER ANGUS: Do you mean really that you were first in a field that nobody else chose to enter?

MR. SINCLAIR: Quite so, most important for the railroad to go up to Nelson.

THE CHAIRMAN: Whom would you say you put out of the field by going in?

MR. SINCLAIR: I think that the Nelson and Port Shepard, the Great Northern, those were railways that were not prepared to fight with Canadian Pacific.

THE CHAIRMAN: You ousted them by going in?

MR. SINCLAIR: Yes, they could not stand the efficient service we were providing.

THE CHAIRMAN: Well, we will let you say that. We will take it for granted. That is all you have to say on that particular subject?

MR. SINCLAIR: Yes. I did not intend to weary you dealing with some of the statements that have been made.

THE CHAIRMAN: You won't weary us, Mr. Sinclair.

MR. SINCLAIR: Well, it would take a long time to answer them all, and I am not going to try and take them all and refute them by historical facts. One thing I do want to emphasize is this, that the Government of Canada and the Canadian Pacific entered into a contract, but the lands in connection with the railway in Southern British Columbia were not granted by Canada but by British Columbia, and Canada secured through the contract out of the lands the Company received through British Columbia, 50,000 acres of this coal-bearing land that was so vividly described in some of the submissions



and statements made to your Commission.

It is not without significance, I say, that the voice of British Columbia is not raised here before you against the repeal of Section 325 (5) and (6). I submit that British Columbia recognizes the harmful effect of having other traffic bear the burden which arises through the railway's inability to raise the so-called Crow's Nest Rates to a just and reasonable level. British Columbia in its submission to the Commission, Volume 13 page 2353 puts the point this way:-

"Lastly, where in the national interest it is necessary to subsidize an industry, this should be done by some means other than through adjustments in freight rates. In our opinion it is unsound and unfair to require one group of shippers to subsidize another group as prevails under the present rate structure."

THE CHAIRMAN: Was any extensive evidence given in relation to that statement?

MR. SINCLAIR: Extensive evidence, no.

THE CHAIRMAN: I mean, was it explained what was meant by it?

MR. SINCLAIR: I suppose -- Mr. Brazier is not here, but --

THE CHAIRMAN: I know, but if there is anything on the record that you know of and can point to --

MR. SINCLAIR: No.

THE CHAIRMAN: Just the statement itself?

MR. SINCLAIR: This statement to the Commission.

THE CHAIRMAN: Yes, I know.



MR. SINCLAIR: And put forward by the Government of British Columbia to you.

THE CHAIRMAN: Quite, but it is in general terms, you see. It does not make reference to anything in particular.

MR. SINCLAIR: I think the inference is very clear.

THE CHAIRMAN: That is the one you draw and ask us to draw.

MR. SINCLAIR: And ask you to draw, my lord. Now, I do not submit to you that the present fixed rates on grain have no connection with the Crow's Nest Pass Agreement. They have. That is clear from the reading of the Statute. But I do say (and I don't wish to be disrespectful to those who have said otherwise) that that is an untenable position to say that the so-called Crow's Nest rates, as operative today, are contractual rates. The Agreement of 1897, on its true interpretation, provided for specified rates for grain and flour to Fort William, but now the low level of those rates through Statute are not only applicable to Fort William but also to export movements to British Columbia Pacific coast ports.

THE CHAIRMAN: You say through Statute?

MR. SINCLAIR: Yes, and Statute alone. The Crow's Nest rates under the Agreement - -

THE CHAIRMAN: Just pardon me, is that a matter of fact that it was through Statute alone?

MR. SINCLAIR: I will explain how it happened a little later if I might, my lord. I can deal with it now, but I do come to it.





THE CHAIRMAN: All right, in your own time.

MR. SINCLAIR: Thank you, my lord. The Crow's Nest rates under the Agreement of 1897 were applicable only to shipping points then in existence on existing lines of the Canadian Pacific Railway. The result of this fact is strikingly demonstrated in Exhibit 158 filed by Mr. Jefferson. Today the Crow's Nest level of rates, as imposed by Statute, are applicable on all lines of railway, Canadian Pacific, Canadian National, and Northern Alberta Railways, eastbound and westbound. This has resulted in increasing the mileage to which the rates are applicable by 19,928 miles or a percentage increase of 537%. There is a percentage increase for you, gentlemen!

Under the Agreement of 1897 the Canadian Pacific was obligated to move certain commodities from eastern to western Canada at reduced rates. The reductions in those rates are no longer applicable. Much was made of this point by Mr. MacPherson in his cross-examination of Mr. Jefferson. However, it must be remembered that such reduced commodity rates would only apply from points on lines of the Canadian Pacific in western Canada in existence in 1897. Moreover, as you will recall, Mr. Jefferson's evidence was that some of the commodities were not now moving from east to west. In the case of other commodities the movement was very small and on these the movement was substantial. I submit that this lost - -

THE CHAIRMAN: What would you say of the present movement of farm implements as compared with what it used to be?



MR. SINCLAIR: I would say that likely has increased.

THE CHAIRMAN: Has increased?

MR. SINCLAIR: Yes.

THE CHAIRMAN: With the population.

MR. SINCLAIR: How the rates compared with 10% reduction from the rate then, I haven't got figures or anything like that, my lord. I heard some questions this morning and I could not answer them.

THE CHAIRMAN: No, I did not ask you that, the volume of shipments.

MR. SINCLAIR: I would say they had increased. That is one that is substantial. I submit, however, that the western freight buyers, that the loss they may have suffered through this no longer being applicable is minor and has been minor, certainly compared to the onerous obligation placed on the railways by the tremendous extension of the grain rates under the Statute.

(Page 19760 follows)



We did not ask for a new agreement with the Government. We had an agreement, and we are prepared to stand by it, and we put tariffs into effect in accordance with its terms, and they did not become effective through Acts of Parliament. I will deal more fully with that later.

Why did the Government find it necessary to terminate the rate provisions of the 1897 agreement? The answer, I submit, is simple and clear. As Canada developed and additional railway lines were built and new shipping points opened, the agreement became unworkable. How unworkable it became is clearly demonstrated by Commissioner Boyce in the Board's judgment in *Re Crow's Nest Rates*, 1924, 29 C.R.C. 238, at pages 276 and following.

THE CHAIRMAN: Is that the one that went to the Supreme Court?

MR SINCLAIR: Yes.

THE CHAIRMAN: Where they quoted Commissioner Boyce?

MR SINCLAIR: Yes. I will give you the quotation of the Supreme Court, my lord.

Commissioner Boyce described the result of applying the rate provisions of the 1897 agreement as chaotic, and his description of the situation was adopted by Chief Justice Anglin in delivering the judgment of the majority (Mr. Justice Idington dissenting) on questions as to the true interpretation of the 1897 agreement. These questions had been referred to the Supreme Court of Canada by the Board of Transport Commissioners. The remarks of Chief Justice Anglin, which I submit are very much in point, will be found in 1925 Supreme Court Reports at page 174.

THE CHAIRMAN: Well, you have part of it at least in this brief somewhere.

MR SINCLAIR: Yes, my lord. You will find in our





submission---

THE CHAIRMAN: Page 186.

MR SINCLAIR: Yes.

He said there, and we quoted him to this effect:

"If under the existing law, unreasonable rates must be imposed or unfair discrimination sanctioned with the resulting chaos and other ill effects so graphically portrayed in the opinion of Mr. Commissioner Boyce, the remedy lies with the high court of Parliament."

THE CHAIRMAN: Now, do you think, reading the whole of that judgment, that Chief Justice Anglin adopted Commissioner Boyce's view? Did he not precede it all with an "if"?

MR SINCLAIR: Oh, yes.

THE CHAIRMAN: "If such is the case."

MR SINCLAIR: Yes. I say that what he was saying is, "Here is the Board of Transport Commissioners, skilled men in matters of rates. I have not got all the tremendous body of evidence and fact that Mr. Commissioner Boyce had, but I am prepared to accept what he says. If what he says is true, I am not going to come to the same result as he did or the same result as the Board did; I am going to come maybe to a different result, but I am not going to say that he is wrong in any way in his description of the situation."

THE CHAIRMAN: He said, "You had better go to Parliament about it."

MR SINCLAIR: All right, I am prepared to accept that statement.

THE CHAIRMAN: If you wish to make any real point there, it seems to me you would have to show just what Mr. Commissioner Boyce said and what evidence he had to rely on when he said it. Isn't that so?



MR SINCLAIR: Well, my lord, I say that that---

THE CHAIRMAN: Because all that the Chief Justice knew about it was what was in that judgment.

MR SINCLAIR: Yes, that is right.

THE CHAIRMAN: He does precede his statement with an "if" --- "If this is so, then go to Parliament."

MR SINCLAIR: That is right. He did not say, "Go to Parliament." He said, "The remedy lies with"---

THE CHAIRMAN: If Parliament is presently in session, whatever remedy, if any, it may in its discretion consider necessary or desirable can be speedily afforded.

MR SINCLAIR: That is right, that is right.

THE CHAIRMAN: Then somebody went to Parliament with the case right after that.

MR SINCLAIR: Yes. I do not say anybody went.

THE CHAIRMAN: Well, Parliament acted.

MR SINCLAIR: Parliament acted.

THE CHAIRMAN: But Parliament did not remedy any condition that Commissioner Boyce had described.

MR SINCLAIR: They <sup>did</sup> not?

THE CHAIRMAN: Did <sup>not</sup> remedy the condition that Commissioner Boyce had described, to your liking.

MR SINCLAIR: Well, I say they remedied one situation.

THE CHAIRMAN: What is that?

MR SINCLAIR: That they prevented discrimination, one place with another. They enabled a rate structure to be applied with equality to all except the railway.

THE CHAIRMAN: You would say, I suppose, they added to your obligations.

MR SINCLAIR: Yes, but what I am saying is, they did remedy the situation Commissioner Boyce describes; but it is the way they did it.



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THE CHAIRMAN: Yes, I see.

MR SINCLAIR: Now, I say Parliament took action so that the tariffs---

THE CHAIRMAN: Did that action grant you any relief?

MR SINCLAIR: I say no. I say that they put upon the Canadian Pacific an obligation, a tremendous obligation. How great an obligation I say they did not even realize when they were putting it on.

THE CHAIRMAN: That is to say, here you quote Commissioner Boyce as describing a state of affairs which I thought you intended to say was unjust to the railway.

MR SINCLAIR: Was unjust to the railway?

THE CHAIRMAN: To the railway.

MR SINCLAIR: Well, of course, Commissioner Boyce was saying how it affected the commerce of the land.

THE CHAIRMAN: I beg your pardon?

MR SINCLAIR: How it affected the commerce of the land.

THE CHAIRMAN: Yes -- chaotic. You only mean that; you do not mean that he was pointing out that the railway was suffering some injustice?

MR SINCLAIR: My lord, that issue I do not think was before him.

THE CHAIRMAN: I see; all right. He was just pointing out that there was this difference in rates, for instance, between rates on the old lines of the railway in existence in 1897 and those on the newer lines built since.

MR SINCLAIR: And not only that, my lord, but on shipping points in existence, applicable only to shipping points in existence in 1897, even though the new ones were on lines that were in existence.

THE CHAIRMAN: That is to say, the rates were





different, and that must have left a lot of confusion and complaint, of course.

MR SINCLAIR: And ill effect.

THE CHAIRMAN: And ill effect, yes; and then Parliament acted by bringing all those rates down to the level of the Crow's Nest rates.

MR SINCLAIR: What it did was, it wiped out the reduction on the westbound traffic, made the Crow's Nest Pass rates applicable to all railways from all shipping points, and gave the Board of Transport Commissioners power to use that level of rates as a measure in considering unjust discrimination. That is the point.

THE CHAIRMAN: That in effect was a lowering of rates, was it not?

MR SINCLAIR: A lowering?

THE CHAIRMAN: A lowering of rates that Parliament effected by doing that?

MR SINCLAIR: Oh, no.

THE CHAIRMAN: Did they increase any rates by doing it?

MR SINCLAIR: Yes, the westbound rates. The reduction---

THE CHAIRMAN: Yes, I know that. They relieved you from that obligation. I am talking now of the east-bound rates.

MR SINCLAIR: The grain rates?

THE CHAIRMAN: Yes.

MR SINCLAIR: Was that a reduction?

THE CHAIRMAN: Yes. It was a reduction, it was not an increase.

MR SINCLAIR: Yes, it was a reduction in this sense, and I will explain how this judgment worked out, if I may. It worked out in a number of ways. There was a



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reduction, for instance, on the grain rate, Vancouver and Pacific Coast ports for export.

THE CHAIRMAN: You had better go on in your own way. I did not understand that you intended to do that.

MR SINCLAIR: Oh, yes.

THE CHAIRMAN: But you will answer what I have in mind as you go along?

MR SINCLAIR: I trust I will, my lord.

The Canadian Pacific had filed tariffs in connection with the rates that the Board were considering in the 1924 case, and those were filed in accordance with the terms of the Crow's Nest Pass agreement of 1897 according to its true interpretation in the eyes of the Canadian Pacific, and their contention was upheld by the Supreme Court finally. Now, those ill effects I say were there, and Parliament took action, as I say.

Undoubtedly Parliament had power to alter the terms of the 1897 agreement -- there is no doubt about that -- but here is the point I wish to make and stress with all the power I can, that by doing so Parliament without the consent of the Canadian Pacific brought about a result, and that result was that we no longer had, in so far as grain rates were concerned, an agreement, but a statutory direction. It is true, of course---

THE CHAIRMAN: That is the statutory direction which is found in subsection 5 of section 325; that is the one you are referring to?

MR SINCLAIR: And 6. It is true, of course, that in establishing statutory rates on grain, Parliament did adopt as the measure of such rates the level set forth in the 1897 agreement, and I submit that that is the reason you find the language in that section 325(5) and (6) in the way it is set out.



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In dealing with the legislation of 1925, I do not wish to overlook subsection 6 of section 325. I submit the result of that subsection is to give the Board of Transport Commissioners power to use the Crow's Nest level of rates as comparable rates in dealing with charges of unjust discrimination under the Railway Act, and that was necessary in view of the earlier part of subsection 5 of section 325, which said that there should be just and reasonable rates irrespective of any agreements. If it were not for subsection 6, the Crow's Nest level of rates, which were made applicable to Fort William as statutory rates, could not be looked to as the measure of the reasonableness of rates such as those covering the movement of grain to Pacific Coast ports for export. As a result of subsection 6 and on complaints from British Columbia, the Board found that it would be unjust discrimination for the railways not to publish the same level of rates to Pacific Coast ports on grain moving there for export as existed on grain moving to Fort William.

THE CHAIRMAN: Did they find it unjust discrimination?

MR SINCLAIR: Yes.

Now, I say further that the Board has power to order the Crow's Nest level of rates on domestic movements from the prairies to British Columbia, and the Board has considered that issue in the Surrey case, but it held that there was no justification for applying that very low level to a domestic rate.

THE CHAIRMAN: Mr. Sinclair, do you see any connection between that subsection 6 of section 325, which deals with unjust discrimination -- the marginal note says so -- and section 314?

MR SINCLAIR: Do I see any connection, my lord?





THE CHAIRMAN: Yes, between the two sections. Just at a first reading, without having considered the matter at all, I should have thought that where those words are found in subsection 6, that the Board shall not excuse any charge of unjust discrimination or undue or unreasonable preference, that would bring into consideration what is provided in section 314.

MR SINCLAIR: Well, the answer, my lord, is this, if I may---

THE CHAIRMAN: Was that argued to the---

MR SINCLAIR: That is a point that is often argued, has been dealt with by the Board, and I think it is conclusively answered, if I may say so, this way: If a rate is a statutory rate, then the Board under the Act cannot use it as the measure to determine whether another rate that would otherwise be comparable is or is not discriminatory, and so therefore section 314 would have availed the complainants from British Columbia, when dealing with the export movements of grain from Pacific Coast ports for export, would have availed them nothing, if it had not been for the balance of section 325 that we are dealing with now.

THE CHAIRMAN: You mean subsection 6?

MR SINCLAIR: Yes.

THE CHAIRMAN: Then you mean subsection 6 extended the meaning of unjust discrimination and undue preference beyond that conveyed by section 314.

MR SINCLAIR: All it did, my lord---

THE CHAIRMAN: It is very important, you see.

MR SINCLAIR: I realize that, and this is my view: All it did was to say, you cannot use the fact that this is a statutory rate, a statutory level, to say, we don't have to apply it any further than the statute itself

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says.

THE CHAIRMAN: When? In what case? We get back to the original question I put. Does it mean in cases which the Board is considering under section 314 and its various subsections, or do you mean apart from that, some new provision intended to be created by subsection 6?

MR SINCLAIR: No, I do not mean any new provision. All I say is, then it made available---

THE CHAIRMAN: Then you come back to this original question which has been bothering me since the very beginning of the inquiry -- the description of the lines to which section 314 applies -- traffic passing over the same line or route.

MR SINCLAIR: Yes.

THE CHAIRMAN: Now, in this case -- the traffic to the Pacific goes westward.

MR SINCLAIR: Yes.

THE CHAIRMAN: And the other traffic provided for by the agreement goes eastward. Can you say they are passing over the same line or route?

MR SINCLAIR: Well, I would say that the reason why the rates were extended to export movements through Pacific Coast ports does not depend on subsection 1 of section 314, but rather on subsection 4, which provides no toll shall be charged which unjustly discriminates between different localities.

THE CHAIRMAN: Well, I would like to consider that further. It seems to me that section 314 is governed quite entirely by the same line or route of railway.

MR SINCLAIR: Well, my submission is that subsection 4 would give the answer.

THE CHAIRMAN: Would it not be easier for Parliament if it intended to do what you say was the ultimate



result of its action, instead of putting in subsection 6, merely to have said that these rates shall apply westward as well as eastward?

MR SINCLAIR: Well, my lord---

THE CHAIRMAN: Anyhow, that was not done.

MR SINCLAIR: I think my answer to that, my lord, is this, as has been said by the learned Law Lords of the Judicial Committee on more than one occasion: We are sometimes a little prone to give the draftsman of a statute credit for more insight than he deserves.

May I proceed, my lord?

THE CHAIRMAN: Yes, certainly. Tell us what was done then after this.

MR SINCLAIR: Well, as I say, they extended the rates to British Columbia for export.

THE CHAIRMAN: Who extended them?

MR SINCLAIR: The Board.

THE CHAIRMAN: Had you not yourselves first put into effect rates to British Columbia which were about the same as those of the Crow's Nest Pass going eastward?

MR SINCLAIR: That may be.

THE CHAIRMAN: That is a matter of fact that I think is important.

MR SINCLAIR: I know that we had extended voluntarily---

THE CHAIRMAN: Now, I gather that from something in the order of the Board which I read yesterday.

MR SINCLAIR: Yes.

THE CHAIRMAN: In that order the Board refers to your existing rates, and I think they say, or they imply, that you had already done this.

MR SINCLAIR: Well, I think, my lord, that you have to know---





THE CHAIRMAN: Is that not so?

MR SINCLAIR: Well, there is quite a history behind that statement, if you are reading it in the 1927 General Freight Rates Investigation.

THE CHAIRMAN: Well, we must not stop because the history is extensive. If you have the order of the Board which was given to me yesterday -- it may be here yet---

MR SINCLAIR: Well, that is the General Freight Rates Investigation. I am going behind that.

THE CHAIRMAN: I have not got it, then.

MR SINCLAIR: I am going behind that. The case about these complaints---

THE CHAIRMAN: Pardon me, Mr. Sinclair. Here is something. This is this case of 1925, and they say in their order:

"The rates established by the Canadian Pacific Railway on grain and grain products to Vancouver for export, were based on a relationship to the grain rates to Fort William, the basis, roughly (and with some exceptions) being that from its main line and southern branches, rates to Fort William were applied to points of corresponding mileage to Vancouver, but with the addition of a constructive mileage for the mountain haul."

Did not the order of the Board leave you just where you had put yourselves? Is that so?

MR SINCLAIR: Well, my lord, I say that the history behind the extension of the grain rates at the Crow's Nest level to Vancouver is not a simple history, but the facts are these, that effective August 1, 1922, the then existing rates on grain carloads from points in the prairie provinces to Vancouver, British Columbia, for export were voluntarily reduced by the railways by 20 per cent. Then effective



October 22, 1923, the rates were further reduced by 10 per cent under Board of Transport Commissioners for Canada General Order No. 384, of October 10, 1923. Then effective September 15, 1925, the rates were further reduced as a result of the Board of Transport Commissioners for Canada Order No. 36769---

THE CHAIRMAN: That is the one I have been reading from.

MR SINCLAIR: ---of September 2, 1925.

THE CHAIRMAN: That is the very one I just read from, where they say that you yourselves established those.

MR SINCLAIR: Well, Order 384 reduced them by 10 per cent. We had previously to that reduced them by 20 per cent, and I say that the railways are caught between the position of having a fixed level moving traffic that way and demands and complaints from their customers that we are denying them the benefit of those rates just because they were not able to get underneath the statute, so they go to the Board finally and say, "We think we are under the statute, we do," and the Board finally agrees with them.

THE CHAIRMAN: That they are under the statute?

MR SINCLAIR: Yes.

THE CHAIRMAN: By virtue of subsection 6?

MR SINCLAIR: Yes.

THE CHAIRMAN: The Board held that?

MR SINCLAIR: Yes, in my view of the history, the cases. Except in this regard---

THE CHAIRMAN: Was there ever any appeal to the Supreme Court in regard to the point of law there? -- because there is one involved.

MR SINCLAIR: There is a point of law, but I know of no case that went to the Supreme Court. My view is, if the Canadian Pacific took it there the Supreme Court would



hold that the Board by that section and by the wording of 325(5) were within their power to determine whether there was unjust discrimination and to compel us to extend the Crow's Nest level. Now, when I say they are under the statute, it is not that they are under the statute in the same way as the rates eastbound, but the effect is that the Board is able to force the railways to apply them to Vancouver for export for domestic purposes.

THE CHAIRMAN: The Board, of course, can give you any rate which is just and reasonable.

MR SINCLAIR: That is right.

THE CHAIRMAN: But would the Board then be holding in this case that you had given an undue preference within the meaning of the Act, or committed unjust discrimination against a locality?

MR SINCLAIR: Yes.

THE CHAIRMAN: Under section 314?

MR SINCLAIR: Yes. It seems to me to be quite---

THE CHAIRMAN: If that is right, that greatly extends the meaning of section 314 from what we were told all along it contained.

MR SINCLAIR: I submit not, my lord.

THE CHAIRMAN: You say no?

MR SINCLAIR: I say that the fact that there would be discrimination between localities is quite obvious. Here <sup>are</sup> Vancouver and Prince Rupert; they are grain ports. Now, a grain port is not made by building an elevator; you have got to get grain there, and you have got to have shipping there. Well, these Pacific Coast ports had some shipping, but they could not attract the shipping that they required for their other inbound commodities, because these ships would have to go out light, and so therefore they pointed out how the east were at an advantage, an unjust and





undue advantage, as compared with them, and I do not think there was any issue fought with more drive than that.

THE CHAIRMAN: I am not saying that it should not be the law, but I am saying that it is the first time I found out that it is the law, because up to the present the meaning of section 314 at least has been put before us as being very restrictive, that two branches of the same railway going to a certain market point and so on, one went east and the other went west to the same point---

MR SINCLAIR: Well, I have given my view. I think it is accurate and correct. If I am not accurate, certainly my friends or somebody else will point it out; but I think that that is the situation.

THE CHAIRMAN: Well, it meets something that I think Mr. Frawley told us a long time ago would be very desirable; that is to say, if you found that the rates on a certain commodity between two points in British Columbia, the same mileage and the same conditions, were so and so, then the rate on a similar commodity in Nova Scotia for an equal mileage under the same conditions ought likewise to be the same. Didn't you argue that, Mr. Frawley?

MR FRAWLEY: Yes, I did.

MR SINCLAIR: Well, with respect, my lord, that is a different proposition.

THE CHAIRMAN: Is it?

MR SINCLAIR: Oh, yes.

THE CHAIRMAN: I am not so sure.

MR SINCLAIR: Well, I would be glad to meet Mr. Frawley on that issue, and would think that I would be successful.

THE CHAIRMAN: Well, I am just wondering how far---

MR SINCLAIR: But I would not like to meet Mr. Frawley or Mr. Brazier or anybody else on the issue of grain



rates, because I am pretty sure that I would not be successful in not sending them to Vancouver for export.

THE CHAIRMAN: In view of decisions by the Board.

MR SINCLAIR: Yes. Now, there was one extension under what I call subsection 6, and here was another.

THE CHAIRMAN: Pardon me again. You have just given me a very wide definition of your meaning of subsection 4 of 314.

MR SINCLAIR: Under the particular circumstances that existed.

THE CHAIRMAN: "No toll shall be charged which unjustly discriminates between different localities."

MR SINCLAIR: Quite right, my lord.

THE CHAIRMAN: In Mr. Frawley's case one locality may be in British Columbia and the other in Nova Scotia.

MR SINCLAIR: I read the Act as a whole, of course. I read the Act as a whole, and I think that I could meet Mr. Frawley on---

THE CHAIRMAN: Anyhow, if the Board has interpreted it that way, that is not your fault.

MR SINCLAIR: Now, that was one, as I say---

THE CHAIRMAN: I asked you the question, though, a while ago -- I am not sure that we have disposed of it -- when this order was made by the Board it took effect upon rates which you yourselves had already made effective; isn't that so?

MR SINCLAIR: Well, I say, my lord---

THE CHAIRMAN: Except you say there was an increase in 1922, I think, of 10 per cent---

MR SINCLAIR: Yes, and also I say that we voluntarily extended, under tremendous pressure and maybe on advice that we would be beaten if the matter was taken to the Court.



THE CHAIRMAN: Under legal advice, you mean.

MR SINCLAIR: Moreover, the Board of Transport Commissioners, under the power granted to it by this subsection we have been discussing of 325, was able to hold that it was unjust discrimination under the Railway Act to have higher rates on branch lines, mile for mile, than on the main line. At the time of the execution of the Crow's Nest agreement, branch line points took higher rates than main line points. However, in 1927, following the General Freight Rates Investigation, this differentiation between main line and branch line points which had existed for so many years, was ordered removed. The result of the 1925 statute was to remove from the jurisdiction of the Board of Transport Commissioners -- and I think this is very important -- the fixing of a just and reasonable level of western grain rates, at the same time putting the Board in a position where, on a charge of unjust discrimination, it was bound to extend this level of rates, which if it had power to inquire into them it might have held were unjust and unreasonable, and it must do it if it was to comply with other sections of the statute and its jurisprudence so well established. The onerous and far-reaching effect of the statutory rates on grain is, I submit, clearly demonstrated.

(Page 19776 follows)





Parliament in 1925 undoubtedly believed they were fixing the rates on grain and flour and, no doubt, had in mind, particularly export movements. But that one segment of a rate structure cannot be treated separately from the balance of the structure, is made abundantly clear by the fact that the so-called Crow's Nest Rates have been extended to commodities other than grain and flour. They now cover the by-products of the milling processes, breakfast cereals and all grain products, and products which are competing with grain in the feeding of livestock.

THE CHAIRMAN: That is your own action. I know how you explain it, but there is no statutory obligation.

MR SINCLAIR: That is the point I make, the fact that Parliament no doubt thinking they are dealing with grain and flour and trying to treat one segment of the rate structure differently from any other, the result is to upset that structure unless it is extended beyond where Parliament intended it to go, and I say you cannot treat one segment of the rate structure differently from the balance of the rate structure. This point which I am dealing with now proves it, and I do not care whether it is infinitesimal or large it proves the point that you cannot differentiate under a rate structure and have that rate structure integrated and reasonable.

Indeed, the pervasiveness of these unduly low rates has prevented the rates on local movements of grain within Western Canada being raised.

You will recall that the other day Mr. Frawley, when I was speaking on this point in cross-examination of one of the Western people, referred to the judgment of the Board in the 21% Case at page 63, and I would



once again want to bring to your attention the language of the Board there, and I will read it only in part.

They said:

"It is considered that no increase should be authorized in the domestic grain and grain products rates between points in Western Canada or with respect to the feed grain rates covered by C.F.A. Tariff 145, C.T.C. 154. To increase these rates with no increase in the others would create a spread in the rates, which, it is considered, would be unreasonable."

Another example of the Board not having jurisdiction over the justness and reasonableness of one segment of the rate structure is hampered by that very thing in dealing with other rates that are wholly within their jurisdiction.

THE CHAIRMAN: What did that case deal with again? I am sorry.

MR SINCLAIR: That was the 21% Increase Case, and it dealt with whether local rates on grain within Western Canada were to be raised.

THE CHAIRMAN: Were to be raised?

MR SINCLAIR: Yes, were to be raised along with all other rates, and the Board held "No", and said: "If we did this, even though we have no jurisdiction over the Crow's Nest rates so-called, that would make a spread because they are so low that we do not think it is right or reasonable."

THE CHAIRMAN: Is there any question in that judgment of their's about unjust discrimination?

MR SINCLAIR: No, I am not dealing with that now.

THE CHAIRMAN: Did the Board in that last ---

MR SINCLAIR: No, no; I dealt first with the



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effect----

THE CHAIRMAN: I am not talking about you. You have just read something from the Board's judgment, and I did not catch it all because my attention was called to something else.

MR SINCLAIR: No; all they said was that they would be unreasonable. It is not dealing with unjust discrimination here at all. I have given instances of that where they deal with unjust discrimination. Here I am dealing with it as to reasonableness.

THE CHAIRMAN: Please read it again.

MR SINCLAIR: "It is considered that no increase should be authorized in the domestic grain and grain products rates between points in Western Canada or with respect to the feed grain rates covered by C.F.A. Tariff 145, C.T.C. 154. To increase these rates" -- and here is the point -- "with no increase in the others" -- meaning the Crow's Nest Pass level rates -- "would create a spread in the rates, which, it is considered, would be unreasonable."

Now, at this stage I would like to turn to our submission and read from page 159, and from the middle of page 160 to the middle of page 161 of part one, because I think it provides a useful ---

THE CHAIRMAN: Will you please tell me the page again?

MR SINCLAIR: Page 159. I think it provides a useful summary.

"We thus find an agreement to apply the Crow's Nest rates had effects far beyond the contemplation of the of the parties at the time the agreement was made, in the following respects;--



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(a) It was found impracticable to limit the application of these rates to the points covered by the agreement;

(b) It was found impossible to limit their application to the Canadian Pacific and, in consequence, railways not parties to the agreement were forced to apply these rates ;

(c) The Board, on a complaint from British Columbia, found the difference between eastbound grain rates and the rates on grain through British Columbia ports for export unjustified. Accordingly the level of rates fixed by the agreement was extended in a way which the parties to the agreement never contemplated."

THE CHAIRMAN: The language you use there is "unjustified".

MR SINCLAIR: Yes.

THE CHAIRMAN: That may be for many reasons

MR SINCLAIR: Yes.

"(d) The railways found that although the agreement covered only grain and flour, it was not practicable to deny the extension of these rates to by-products of the milling of grain and of other competing products;

(e) The effect of the statutory fixing of rates on grain and flour has been reflected by order of the Board in the domestic grain rates in Western Canada."

"Canadian Pacific" -- and I am reading now from page 160, towards the middle of the page -- "also points out that it receives less than three and one-half million dollars under the terms of the Crow's Nest Pass Agreement. The reduction in grain rates between 1897 and 1903, when



the Canadian Pacific became subject to regulation of its <sup>rates</sup> / by the Board, was borne wholly by the Canadian Pacific and was not in any sense borne by other shippers. This was because until 1903 the Company was permitted by statute to have net earnings up to ten per cent of its capital investment without interference by the Governor-in- Council with the level of its rates and also because in that period it never at any time reached that level of earning power.

"During the war years the railways were permitted"  
--that is referring to the <sup>world</sup> first/war --"to increase all rates including the rates on grain and grain products. After 1922, however, when the Crow's Nest Pass rates were restored, the probability is that the greater burden imposed by the low level of these rates has fallen upon shippers and consignees of other traffic."

In support of our contention -- I have left the brief for a moment -- that the Crow's Nest level of rates is a burden on other shippers, may I recall to you the situation in 1922 which I discussed with Mr. Moffat at page 19424 of the transcript. There, as a result of reducing the grain rates at the Crow's Nest level, the rate reductions which had been proposed by the Canadian Pacific on a large list of basic commodities other than grain, were not put into effect by the Board, due to the reduction in revenue brought about by the restoration of the Crow's Nest level of rates to grain traffic.

I now read one more paragraph, if I may from the submission. "That the burden of the low level of grain rates at present rests mainly upon the shippers and consignees of other than grain traffic can be



- 19781 - Mr. Sinclair.

demonstrated by reference to the Board's Judgment in the 21% Case. At page 66 of the Judgment (XXXVIII J.O.R. & R.) the Board found the deficiency in revenue of the Canadian Pacific at something more than thirty million dollars. This additional revenue had to be derived by an increase in rates on traffic having a revenue value to the Canadian Pacific of slightly more than \$137,000,000 and the resulting increase was therefore 21%. "

Mr. Spence will also be dealing with that subject.

THE CHAIRMAN: We had better take a recess now.

-----  
SHORT RECESS  
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(Page 19784 follows)





---ON RESUMING

THE CHAIRMAN: All right, Mr. Sinclair.

MR. SINCLAIR: That is my submission on the historical aspects, except that I may make some reference to them in dealing with the economic aspects, to which I would now like to turn my attention, with your permission, my lord and Commissioner Angus.

Before Canada had established itself in the grain markets of the world and before definite channels of grain marketing had hardened, then admittedly there may have been some justification for a fixed and stable rate on grain at a lower than normal level. Canada, however, has today progressed far beyond that point. While Canadian grain is competing in Europe with American grain, with Uruguay grain, with Argentine grain and with Australian grain as well as competition with the domestic production of Europe, it does, as agreed by Mr. Brownlee (Volume 106, page 19624 of the Transcript) play an effective part in setting the world market price. I don't want to state it on too high a level, but I would say a most substantial and effective part. I submit grain from the exporting areas serving all the European market is charged higher rates to get into position in Europe than is grain from Western Canada. The Canadian rate on grain to Fort William and to Pacific coast ports for export is only one segment of the transportation charge. Certainly it is the segment best known by the Western Canadian farmer, because of the fact that, for convenience, it is used as a basing price at Fort William.

The Canadian Pacific submits that the farmer



does not pay the freight on grain, especially when his difficulties of marketing are most acute. When these difficulties are least acute he may well be able to reimburse himself. I will discuss that more fully later.

I now wish to address myself to the question as to whether, assuming that the farmer does pay the freight to Fort William, it would be a burden to him to pay just and reasonable rates on grain, if such just and reasonable rates were fixed.

The Prairie Provinces and others who have appeared before you in opposition to the submission of the Canadian Pacific, have disliked the comparison set out in the Canadian Pacific Brief between the rates on the contiguous area of the United States on grain moving to Duluth and to Seattle and Portland as compared with the rates to Fort William and to Vancouver. They felt they had some comfort in the fact that much of the winter wheat was close to water, and I recall the tremendous emphasis on the intermountain wheat displayed by Mr. MacPherson in his cross-examination of Mr. Jefferson. I find similar expressions in the Grain Growers' Brief. Nowhere in the United States does any grain move to water at rates as low as those in Canada, irrespective of the mileage. The evidence in support of this was placed before you by the Canadian Pacific. No attempt was made to refute it.

May I emphasize a point here. You will recall the evidence of Dr. Britnell at page 19216 of Volume 104, where he said that he knew of no other place in the world where there was a Statutory fixed rate on particular traffic. I think that is a most



important point. The result of having a fixed statutory rate on grain was pointed up by Mr. Jefferson, when he compared the ton mile revenues on grain to all traffic on the Great Northern and Northern Pacific with that on the western lines of the Canadian Pacific. That was in Exhibit 165. You will recall that on the United States granger roads the ton mile revenue from grain was higher than all other traffic, while on the Canadian Pacific it is the reverse.

The American farmer, as witnesses for the Provinces and the Western grain trade freely admit, is more prosperous than the Canadian farmer, not only today but in the past. Some of that prosperity in recent years has been due to United States Government policy, but the American farmer was able to pay freight rates very substantially higher than the Canadian freight rates and still be more prosperous than his Canadian neighbor, even when the price of grain in the United States and Canada was very closely related. The close price relationship between grain in the United States and Canada is graphically portrayed in Exhibit 167, filed by Mr. Jefferson.

I should say at this point that the winter and spring wheat production in the United States in the large grain-growing states and its relation to ports is set forth in the very useful map which was filed with your Commission during Mr. Armstrong's evidence and explained in detail by him. That map is Exhibit 210.

Can the western Canadian farmer pay higher rates on grain? Again I am assuming, almost certainly incorrectly, that he pays the freight rates. Farm income





today and for some years past has been at a level never before exceeded in Canada. Wheat today is bringing on the average something more than \$2.00 at Fort William. It is conceivable that this price might recede somewhat. How far it can recede before the western agricultural economy is out of balance with the rest of the Canadian economy, is a matter that I don't think it necessary for me to discuss now. The point I wish to make is that if grain rates <sup>to</sup> be just and reasonable, had to rise to the level Mr. MacPherson so carefully calculated, that is an increase on the average of 12¢ per bushel, it would amount only to a 6% levy on the present value of the normal western wheat crop. Possibly for the benefit of my friends I should say how I arrive at that figure. Take an average price of \$2.00 per bushel and an increase of 12¢ per bushel. This would amount to an increase of 6%. I have also calculated it in a more involved way and the figure is the same.

We have heard much of the calamitous thirties and low prices on grain. That such low price were wrong and should never return, is recognized by every thinking Canadian, and indeed is a part of established national policy. No one will seriously suggest that the Government would permit a recurrence of depressed grain prices. It is easy for me to understand the feeling of the western farmer who had the misfortune of ruinous prices and drought. But for western Governments and skilful trading farm organizations to suggest that a rise in the price of grain freight rates by a few cents a bushel would be ruinous to the Prairie economy, is an almost incredible exaggeration.



Commissioner Angus in discussions with more than one witness, particularly at page 19354 in Volume 105, pointed out that the effect of inflation certainly prevents a rate that was reasonable in 1897 being reasonable under such conditions. That today we are in an inflationary cycle I don't think can be denied. I submit that the fixed level of grain rates when made was below what would be a just and reasonable level, that is by 3¢.

THE CHAIRMAN: Pardon me, you say "when made".

MR. SINCLAIR: When made, that was in 1899. It was 3¢ below the level that existed - -

THE CHAIRMAN: What do you say about that?

MR. SINCLAIR: I think they were below a just and reasonable level by 3¢, because I say they were just and reasonable at the time the agreement was entered into.

THE CHAIRMAN: But whatever the rates were, they had been fixed by the railways?

MR. SINCLAIR: That is right.

THE CHAIRMAN: At a time when Parliament had no control over them?

MR. SINCLAIR: Quite so, and they were just and reasonable.

THE CHAIRMAN: I am not saying they were not. The test is subject to that, that nobody else controlled them. Secondly there is the fact that a few years later, three or four years later you were using these lower rates.

MR. SINCLAIR: Quite so, my lord.

THE CHAIRMAN: And still making money out of it?

MR. SINCLAIR: Quite so, my lord.

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THE CHAIRMAN: That they were compensatory?

MR. SINCLAIR: Quite, and I would like to address myself to that.

THE CHAIRMAN: I am just getting the picture.

MR. SINCLAIR: Yes, I would like to address myself to that. First, while there was no regulatory body controlling rates on a particular commodity to say they were just and reasonable - -

THE CHAIRMAN: And so far there was no competition, was there?

MR. SINCLAIR: Competition?

THE CHAIRMAN: You had no competition?

MR. SINCLAIR: It may be. I say that there was control to see that rates remained just and reasonable. There was the control that could be exercised by the courts, because it is a part of the common law duty of a common carrier to carry all goods offered at reasonable rates. I have searched, my lord, and I can find no case in which anybody went to the courts to say that the Canadian Pacific had refused to give a shipper, a consignee, railway transport at just and reasonable rates in the period prior to the control being exercised by the Board in 1903. Certainly I cannot find any grain case, and that is what I was really looking for.

Now, I say that they were at a just and reasonable level in 1897 and that they came down a little bit from that, 3¢ a bushel. Now, they were still compensatory, even though they were not at a just and reasonable level to the railways. They paid the out-of-pocket costs on moving grain and something more towards





constant expenses. I think that this is the only inference that can be drawn from the historical facts. Contrast that with the situation today. Now, undoubtedly they came closer, as the years went on, to their out-of-pocket level. The amount of margin over and above out-of-pocket costs kept receding under the impress of the Canadian Northern and the Manitoba Agreement. But when costs rose - -

THE CHAIRMAN: Those competitive rates kept on going, did they not until about June 1918?

MR. SINCLAIR: Yes.

THE CHAIRMAN: Although costs must have gone up very considerably.

MR. SINCLAIR: That is just what I am coming to. I am right at that point in the submission I wish to make.

THE CHAIRMAN: All right.

MR. SINCLAIR: Then costs started to go up, and the railways were then in a position where they were carrying grain at less than out-of-pocket costs. They went to the Board and they finally got the Crow's Nest Pass rates up but only up to the Crow's Nest level, because they were still not meeting out-of-pocket costs.

THE CHAIRMAN: Pardon me, you went to the Board and the Board increased your competitive rates to the level of the Agreement of 1897?

MR. SINCLAIR: That is correct. They said that was a ceiling.

THE CHAIRMAN: Yes.

MR. SINCLAIR: As I say, costs were high, the costs of production services were high. The grain rates were not compensatory, certainly far from being



remunerative.

THE CHAIRMAN: Well, the Board granted you only that measure of relief. You had asked for more than that.

MR. SINCLAIR: Well, of course, we could not - -

THE CHAIRMAN: Under the Statute. You didn't ask for a recommendation of any sort ?

MR. SINCLAIR: The Agreement stood.

THE CHAIRMAN: I know.

MR. SINCLAIR: There it was.

THE CHAIRMAN: Then you got all you asked for, all that the Board could give you.

MR. SINCLAIR: All that the Board could give us. Costs continued to rise. Parliament then suspended the Agreement and it was, as your lordship knows from the evidence here, non-operative, and the rates went from an average of 20¢ to 32.5, and they finally in 1922, after, I submit one of the - -

THE CHAIRMAN: Pardon me again, was this 32.5 fixed by the Board?

MR. SINCLAIR: Fixed by the Board? I think, yes. Yes, it was fixed by the Board. I was saying that in 1922 the Crow's Nest level of grain rates was restored, after one of the greatest political campaigns that I think I have read about in Western Canadian history in the farm movement.

THE CHAIRMAN: You mean, the campaign for the restoration?

MR. SINCLAIR: Yes, the literature and some of the statements made in that campaign, the fervour with which the attack was carried on being outstanding. They even had children going to the school-house in



From 1922 to 1925 the situation of the Crow's Nest Pass agreement stood, suspended in so far as west-bound rates were concerned, applicable in so far as grain rates were concerned. In 1925 the present sections of the Railway Act were put into the statute.

Now, my lord and Mr. Commissioner Angus, the farmer runs his own business, as was so ably demonstrated by Mr. Wesson on behalf of the Pools, on the common sense principle of imposing charges to pay the cost of providing the service and giving something in addition (Vol. 105, p. 19489). Why should the farmer, able to pay handling charges on a common sense business basis, claim that he is unable to pay transportation charges on the same basis?

If rigid price levels, arising from price control, were adversely affecting the national economy, as was stated by the Prime Minister in announcing the discontinuance of price control, I submit that surely the western farmer, who has benefited by having his commodities meet, and more than meet, increasing costs, should not require railway efficiency to be hampered by inadequate revenues arising from a fixed price of one segment of the transportation cost, established a half-century ago.

Good business judgment on the part of the Canadian Pacific demands that it do everything in its power to assure western agricultural prosperity. Canadian Pacific should not be forced by Parliamentary control of grain rates to assure the prosperity of ocean shipping owners or other carriers of the western grain crop, or to pass on some loss which they sustain to the advantage of someone outside of Canada. As Mr. Wesson candidly admitted at page 19479, volume 105, he did not think that the Canadian Pacific would knowingly do anything that would bring ruin to the western agricultural economy. Canadian Pacific sincerely





believes that the western farmer, if he bears the freight rate to Fort William, can today, and has been able for some time and will in the future as far as we can see it, afford to pay/<sup>a</sup>just and reasonable level of rail transportation charges on grain. This is the view of an extremely well-informed traffic officer, and I refer you to the evidence of Mr. Jefferson at page 15247A in volume 75. It also was clearly the view of Mr. P. C. Armstrong, who I do not think anyone can deny is a friend of the western Canadian farmer.

I think that I should recall to the Commission that I was careful to put to Mr. Harries, appearing on behalf of the prairie provinces, and to Mr. Wesson, appearing for the Pools, and to Mr. Brownlee, appearing for the United Grain Growers, the question as to how western farmers would be harmed if the Board of Transport Commissioners, on the established principles of rate-making, fixed just and reasonable rates for grain and the western farmers, if they needed assistance, secured that assistance from the Dominion Government. In answer to Dr. Angus the other day I said that they would need assistance, in our view, when the western Canadian agricultural economy got out of balance with the rest of the Canadian economy.

Mr. Harries, at page 19400 in volume 105, after some wiggling, I may say, gave his answer as, "I do not know; I mean, I cannot answer that question."

Mr. Wesson took a little time to answer the question. His answer extends from page 19512 to page 19516, and finishes up with, "My answer would be, if there is to be a subsidy, sir, it should be a subsidy to the C.P.R. and not to the grain growers of Western Canada."

I asked Mr. Brownlee the same question at page 19634, and after reading the transcript, all I can say is that Mr. Brownlee successfully eluded me in answering it.



But this point I wish to make with all the emphasis of which I am capable. The Canadian Pacific does not believe that the western farmer would be harmed, and I think that on any fair appraisal of the evidence, neither do the witnesses who appeared here on behalf of the Provincial Governments or the western farm interests.

I would now like to turn my attention to what might be termed basic economics, or what I have stated to be economic truisms.

THE CHAIRMAN: Before you do that: A few minutes ago you said that these rates should be handed over to the Board to be adjusted on the principles -- I have forgotten your exact language.

MR SINCLAIR: The established principles of rate-making.

THE CHAIRMAN: That reminds me of the talk we had this morning about just what the Board would be expected to do; you remember?

MR SINCLAIR: Yes, my lord.

THE CHAIRMAN: So far I have taken it for granted that in handing these to the Board you do not wish any amendment made to the Act as to the powers of the Board; is that so? That is, whatever powers the Board has now are to remain as they are, and you will go before them---

MR SINCLAIR: The powers that they have in regard to the elements---

THE CHAIRMAN: You see, Mr. Spence seemed to me to be going beyond what we heard before, saying the Board would be able to take certain matters into consideration. It sounded new to me. What is your position?

MR SINCLAIR: Well, my lord, I do not think---

THE CHAIRMAN: That is, your company is not asking, is it, that the Railway Act be amended so as to alter in any



way the powers of the Board?

MR SINCLAIR: In regard to the elements that may be taken into account by the Board in fixing just and reasonable rates?

THE CHAIRMAN: Yes.

MR SINCLAIR: No, we are not asking that.

THE CHAIRMAN: Well, you see, the questions put by Mr. Spence this morning led me to think that perhaps you had a different attitude now. I would just remind you, then, of the description of the powers of the Board -- I think the latest expression is in the judgment of March 30, 1948, was it not?

MR SINCLAIR: I think, yes---

THE CHAIRMAN: The judgment says:

"In other words, while members of the Board may and do, as Canadians, sympathize with policies of economic development which may through increasing diversity lead to greater economic solidarity, it is not their general opinions but the powers conferred on them by the Railway Act which determines what they can do. Very wide powers, it is true, are given under the Railway Act; but the Railway Act is not to be construed as if it were a blank cheque to be filled in as members of the Board see fit. It is not the Board's function as delegated by Parliament to make rates to develop business, but to deal with the reasonableness of rates either on complaint or of its own motion."

Then right after that they say:

"It has been held time and again that rate-regulating commissions have no right whatever to attempt to equalize geographic, climatic, or economic conditions. They are concerned simply and wholly with the questions of the reasonableness of the toll which the <sup>railway</sup> company is





seeking to collect for the carriage of a given commodity, irrespective of how it is made, or whence it comes."

Now, that is the opinion of the Board today as to its own powers, the scope of its own powers, in fixing rates. Is that not so?

MR SINCLAIR: That is what they said in that judgment.

THE CHAIRMAN: That is what they said, yes. And you wish to have these powers left undisturbed.

MR SINCLAIR: I want to say this, my lord: I think there is some misunderstanding or misapprehension among my friends in the provinces and elsewhere as to just what effect the Board can give to elements in the---

THE CHAIRMAN: Even after this statement I have just read?

MR SINCLAIR: Well, my lord, it all depends on how you look at it and how you wish to interpret it. That was in a general rates case. I think that you have to look at the particular problem to which the Board's mind was directed, and I say that there is all the difference in the world between economic planning and economic effect. I think it has been said here on more than one occasion that rates have some economic effect.

THE CHAIRMAN: Oh, yes, many things do have economic effects, although we may not have had any economic planning in mind at all when we did them.

MR SINCLAIR: I think, my lord, that the Board in fixing just and reasonable rates for grain would have power under the existing statute to take into account many things, including what would be just and reasonable to the western farmer if the western farmer is not a depressed part of the economy.



THE CHAIRMAN: If he is not a depressed part of it?

MR SINCLAIR: Yes.

THE CHAIRMAN: Well, have you in mind, then, rates that would vary?

MR SINCLAIR: As changing conditions and costs---

THE CHAIRMAN: Sometimes the farmer has been the real example of the man living under conditions of depressed economy.

MR SINCLAIR: Yes, and it is not, I submit, the function of a just and reasonable rate to fix rates to attempt to assist to bring the farmer into balance with the rest of the economy. That is something for Government policy, and should be paid directly to the farmer. That is my submission and my view. I have stated it as carefully as I can, my lord.

THE CHAIRMAN: You do not wish to have the Railway Act amended in any way, excepting the repeal of this obnoxious subsection; that is right, is it?

MR SINCLAIR: Yes, but let me say this: I have given you my view, my lord, on the question you put to me, but Mr. Spence, who has had some I think fourteen or fifteen years of experience before the Board of Transport Commissioners, will deal with this and develop it further. Of course, if your lordship has any questions that I can answer I will be glad to give you my view. I think I have expressed it as carefully as I can, after giving it some thought, and I am sure that Mr. Spence will try to assist in any way he can.

THE CHAIRMAN: I would just call your attention to the fact that page 189 of your brief is one that has given rise to a great deal of controversy as we have gone along.

MR SINCLAIR: Yes, my lord.



THE CHAIRMAN: And usually Mr. Evans has given us the explanation of what the language means.

MR SINCLAIR: Yes. Well, my lord---

THE CHAIRMAN: I am not asking you to do this now. You say Mr. Spence will do it.

MR SINCLAIR: Well, I think that we have explained what that means.

THE CHAIRMAN: Well, perhaps you have.

MR SINCLAIR: In the record.

THE CHAIRMAN: I just thought that when I heard Mr. Spence this morning, I was listening to a departure from previous explanations.

MR SINCLAIR: Well, with respect, sir, I say that it was not a departure.

THE CHAIRMAN: I see.

MR SINCLAIR: It is difficult, my lord, I think you will agree, for Mr. Spence to express his thoughts in the same words that I use, or for me to express my thoughts in the words of Mr. Evans, or for Mr. Evans to use the same words as Mr. Spence or myself; but I think that I did try a few moments ago to state what I think, and I do not think it is a departure from what Mr. Evans thinks or what the Canadian Pacific thinks or what Mr. Spence thinks. I think this, that my friends from the provinces are trying to find some comfort in trying to make this situation more complex and more difficult than it really is.

COMMISSIONER ANGUS: Mr. Sinclair, when you referred a few minutes ago to a question of mine, what I had in mind in asking that was this, that you had asked witnesses how the farmer would be harmed if just and reasonable rates made on established principles of rate-making were applied to grain, and then if the industry when it needed it received a subsidy, and my difficulty was this: If that question





meant, how will the farmer be harmed if a subsidy is always forthcoming to prevent his being harmed, then it seemed to me to be a question that answered itself: he could not be harmed. But if it meant, how would he be worse off if these rates were fixed in the way you describe and then in bad years he got a subsidy, it seemed me there too there was an obvious answer, that he would not make as much profit/<sup>as</sup>otherwise in the good years. Now, have I misunderstood your question?

MR SINCLAIR: Well, Mr. Commissioner Angus, let me put it this way: The western farmer today if he pays freight pays it on a different basis or on a different principle of rate-making than does anyone else. Now, I say that if his rates were fixed on the same rate-making principles as everybody else in Canada, those rates might go up to a certain point and then come down, depending on the general level of cost of providing transportation in Canada, and taking into account all the favourable factors that there are in moving the western grain crop. Now, the western farmer, I suggest, is harmed only when he as a part of an economy, a section of an economy, because of inability to buy the wheat, for whatever reason that may be, gets out of line, and so therefore the depression of his returns is not followed by a depression in the cost of providing railway service and therefore a reduction in the rate. Under those conditions, depending on how far the economy of the farmer gets out of balance, he will require assistance. If it is a little out of balance, no. Now, if it is just a little bit out of balance, that is the only time he would be harmed. If it gets a lot out of balance, then the Dominion Government steps in, at some level -- I do not know where they would step in -- they



would step in and they would give him assistance, and of course then they would bring the western segment of the economy up to the level of the rest, and in most circumstances he would not be harmed. There is a little part where he could be harmed.

COMMISSIONER ANGUS: I follow that, but isn't there another point at which he would be a little worse off? That is to say, suppose that the system were out of balance in his favour, and he was getting a high price for wheat but paying the statutory fixed rate for freight, assuming that he pays it. He would be making then a large profit.

MR SINCLAIR: Quite so.

COMMISSIONER ANGUS: With the so-called just and reasonable rates he would be making at such a time a smaller profit.

MR SINCLAIR: That is right.

COMMISSIONER ANGUS: Is that difference being harmed or is it something else?

MR SINCLAIR: Well, I say that he has got an advantage that he does not deserve, and so therefore he is not being harmed if it is taken away.

COMMISSIONER ANGUS: I thought perhaps you were using "harmed" in that rather special sense of rather unreasonably harmed.

MR SINCLAIR: That is right.

THE CHAIRMAN: We will adjourn till tomorrow morning.

---The Commission adjourned at 4:45 p.m., to meet again at 10:30 a.m., on Friday, March 31, 1950.



A.R.

*Canada*

ROYAL COMMISSION  
ON  
TRANSPORTATION

EVIDENCE HEARD ON

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ROYAL COMMISSION ON TRANSPORTATION

Ottawa, Ontario,  
Friday, March 31, 1950

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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO  
FRIDAY  
MARCH 31, 1950.

THE HONOURABLE W.F.A. TURGEON, K.C., LL.D., - CHAIRMAN  
HAROLD ADAMS INNIS - COMMISSIONER  
HENRY FORBES ANGUS - COMMISSIONER

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G.R. Hunter  
Secretary

P.L. Belcourt  
Asst. Secretary  
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I.D. Sinclair		
C.D. Shepard	)	Province of Manitoba
M.A. MacPherson, K.C.	)	Province of Saskatchewan
J.J. Frawley, K.C.	)	Province of Alberta

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Ottawa, Ontario,  
Friday, March 21, 1950.

3

MORNING SESSION

THE CHAIRMAN: Very well, Mr. Sinclair.

MR. SINCLAIR: May it please the Commission, when we adjourned last evening I was at that point of my argument where I was just turning to the matter that I term "basic economics."

THE CHAIRMAN: You term it what?

MR. SINCLAIR: "Basic economics," or what I at one other time stated to be an economic truism. I have heard many times that the farmer's viewpoint is "when prices are good the crop is poor; when the crop is good, prices are poor." That, of course, as an established principle is patently false, just as patently false as the statement that the farmer pays the freight on everything he buys and on everything he sells. We had the good fortune to have two economists of repute deal with this matter. I refer you to the evidence of Professor McDougall at pages 17793-4 in volume 94 of the transcript. His evidence may be summed up in this way. If the statement under discussion-- that is, "when prices are good the crop is poor; when the crop is good prices are poor"-- were true, then what would happen in the case of a farmer in one part of Canada whose products were sold, directly or indirectly, to a farmer in another part of Canada? What would happen to him? We should be faced with the extraordinary situation in which both of these farmers paid the freight charges on the goods which is beyond belief. In addition, as Professor McDougall pointed out, farmers buy goods in the same markets, even in the same stores, as do non-farmers. Can it really be believed that merchants or market factors can distinguish between farmers and non-farmers in setting prices and





applying different treatment to the two types of customers?  
I say obviously no.

We called Professor McDougall. We have to thank Mr. Frawley for calling Dr. Locklin. He was a provincial economic expert. Dr. Philip Locklin also refused to put credence in the statement that the farmer was not subject, just as everyone else, to economic law and that the farmer could not and does not, generally speaking, pay the freight both coming and going. His views on this point are expressed in his book on the Economics of Transportation, Third Edition, at page 21. I am just going to read a short extract, as follows:

"It is commonly maintained that the farmer pays the freight both on the things which he buys and on the things which he sells. On the goods which he buys, the price is said to be the factory price plus transportation and other costs incurred in getting the goods to the farm. On the things which the farmer sells, the price received is said to be the price at the consuming markets less transportation charges. Thus the farmer pays the freight both ways, it is argued. If this is true, it would seem that on manufactured commodities the freight rate is borne by the consumer, but on agricultural products it is borne by the producer. But this cannot be true unless one law determines the price of manufactured commodities and a different law determines the price of agricultural products."

I think it would be most useful, at this point, to recall the following evidence which is at page 13109 in volume 62:

"COMMISSIONER ANGUS: Were you writing --"

Referring to that statement I have just read.



"--with farmers for export in mind, or were you considering sales mainly within the country?

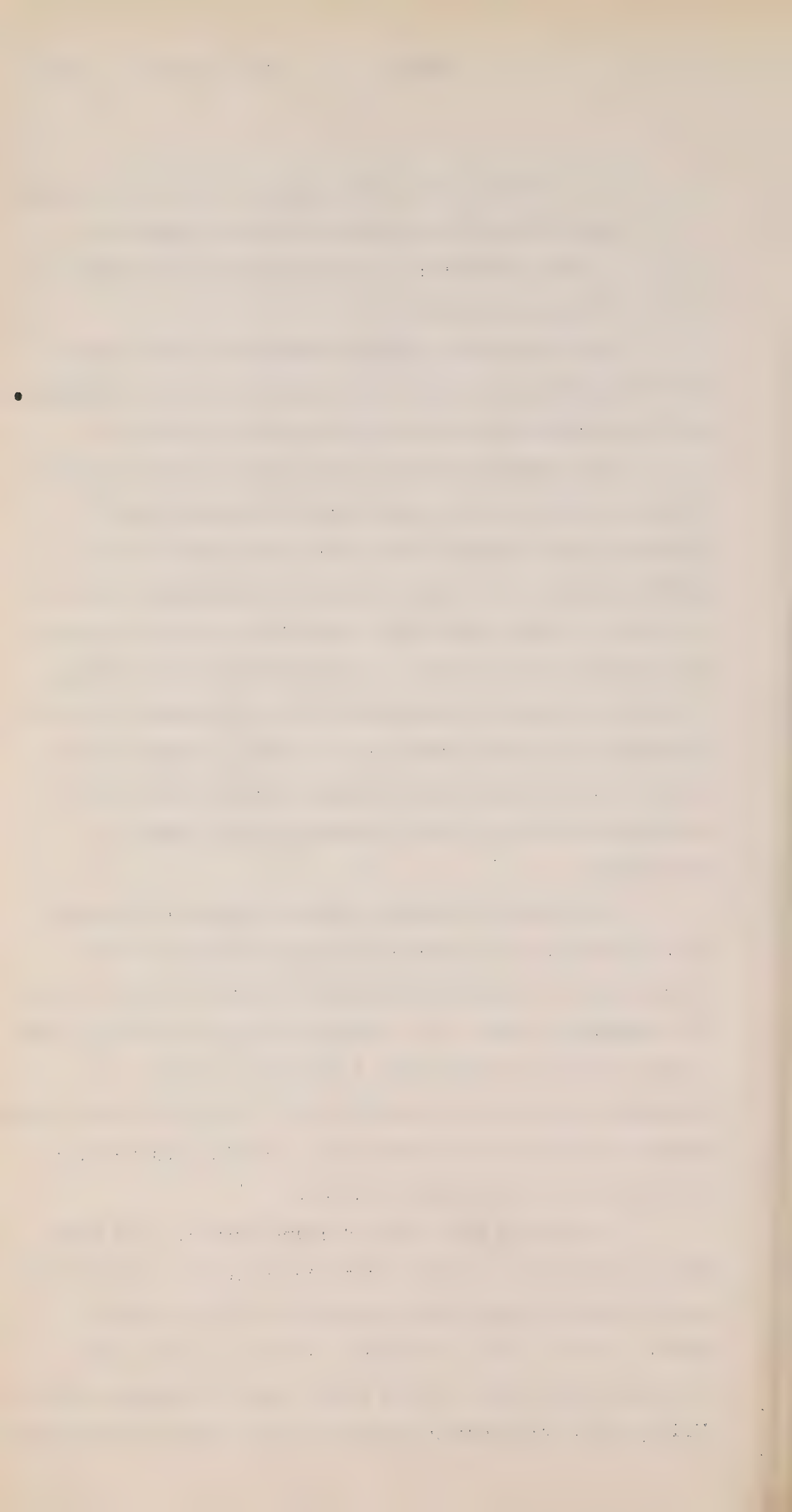
DR. LOCKLIN: I do not believe I was making any distinction there."

Dr. Locklin and Professor McDougall were dealing with the general principle. A specialist in the economics of wheat marketing dealt with the matter in detail.

Mr. Armstrong expressed the opinion that economic theories and practical conditions of business both indicate that, in those times when the seller is at a disadvantage in the bargaining, it is impossible for him to benefit from freight rate reductions or to be injured by freight rate increases. In such instances any known reduction in cost of production will, of course, be taken advantage of by the buyer and, in order to maintain his supplies, the buyer will have to concede to the seller compensation for any known increase in the cost of production.

Mr. Brownlee departed from the position taken by Dr. Britnell. Dr. Britnell said that in his view the farmer paid the transportation cost right from the farm to the consuming centre. Mr. Brownlee, who was speaking from a more practical standpoint, I take it, and not as an economist, said in his view that the farmer paid the transportation cost to the lakehead but that the buyer paid it from the lakehead to the market.

If you take the case of coarse grain, I had some discussion on that subject with Dr. Britnell. Dr. Britnell admitted that coarse grain was dealt with the same as wheat. He said that the farmer received, in the cash settlement, the Fort William price less the freight to Fort William from his country shipping point. When I put to him



what would happen if the man at Sintaluta sold some barley to the Regina Brewing Company he said, after thinking of the matter, that he would then get the Fort William price less the freight from Sintaluta to Fort William I say it is inconceivable to say that the farmer pays the freight to Fort William where there is a clear example of grain not even moving there.

(Page 19804 follows)





The same thing happens in regard to all grain. On all grain, whether used locally, domestically in Western Canada, where the freight rates are different, or where the grain is going to Fort William for furtherance from that point, the farmer receives the Fort William price less the freight to Fort William. Now, much of that grain moving locally in Western Canada moves at higher rates than the Crow's Nest level, but that does not reduce the price the farmer receives. I submit that that clearly shows---

THE CHAIRMAN: What is that last statement again?

MR SINCLAIR: That if grain is used locally in Western Canada the farmer at his country elevator receives the Fort William price less the freight to Fort William.

THE CHAIRMAN: Less the freight to Fort William?

MR SINCLAIR: Yes. The grain of course does not move to Fort William; it moves locally in the west at higher rates than the Crow's Nest level, but even when it does so the farmer does not receive less for his grain.

THE CHAIRMAN: Does not receive less for his grain?

MR SINCLAIR: Even though the freight rates are higher.

THE CHAIRMAN: You mean the freight rates being domestic?

MR SINCLAIR: Yes.

THE CHAIRMAN: Yes, I see. Are you saying that if a farmer, for instance, sells his wheat to a mill located in Saskatchewan -- is that what you have in mind?

MR SINCLAIR: I say farmers sell their grain at the country elevator.

THE CHAIRMAN: Oh, yes, you have the country elevator; I understand you now.



MR SINCLAIR: That is where farmers sell the grain; they do not make, with rare exceptions, individual sales.

Mr. Armstrong described international wheat marketing conditions, and indicated that owing to the great skill and experience of buyers, this rule of the incidence of freight rate changes will operate with special force in the case of wheat.

On the other hand, Mr. Armstrong did not deny that freight rate increases would never be paid by the seller. That, however, would only occur when the seller was at a relative advantage in marketing, and might pass on any increase in costs to the buyer, in the sense that he would take the full amount of any increase in a seller's market or would in any event be well able to pay such increases.

Now I would like to read one short extract from the transcript which I think summarizes Mr. Armstrong's evidence on this question, and I think it is useful. It is at page 18451 of volume 98. Mr. Armstrong said:

"The wheat market is definitely inclined to be a buyers' market because of the greater skill, in my opinion, and the greater wisdom of the buyers as compared to the sellers. I think the sellers have been inclined to be too timorous, and I believe that almost any alteration in the transportation charges will inure to the advantage or disadvantage of the buyer and not to the seller."

Now I would like to turn to the instances that have been discussed here of how that theory has worked out. Mr. Armstrong referred to what he at that time suggested was the only modern instance -- that was in May 1929 -- where, in a mistaken effort to assist United States



wheat growers, President Hoover induced the railways to make a voluntary reduction in wheat export freight rates in the United States. The result was a decline in Chicago wheat prices. Since this indicated the failure of the effort, the decreases in freight rates were taken out at the end of September 1929. The Chicago wheat market, then in a declining trend, at once rose to compensate for the increased freight charge.

Later I reminded Mr. Armstrong that there had been the instance of a decrease in 'freight rates on wheat in Canada, in July 1922, when the rate from Regina was reduced from 29¢ per hundred to the so-called Crow's Nest level of 20¢ per hundred, and Mr. Armstrong informed me that it could be taken for granted that the same principle would apply. I used this instance during cross-examination of Mr. Harries after checking the market records. The dovetailing between theory and effect in both these cases is striking. The economists called by the Provinces, while not accepting that the instances cited established the theory, did not explain them.

Mr. MacPherson suggested that probably both these decreases in price -- that is, in the United States and in Canada -- following decreases in freight rates, might have resulted from rainstorms which came at just the right moment. He did not say whether acute drought conditions had prevailed in the United States when the increase in freight rates was followed by an increase in price -- which would be a logical extension of his argument. Disregarding Mr. MacPherson's weather speculation, there is left supporting evidence that Mr. Armstrong's analysis of this problem has been borne out in the only three cases -- two of decreases and one of increase in freight rates -- which are available for study in modern times.





Mr. Brownlee was the only witness who attempted to criticize through evidence Mr. Armstrong's testimony on this subject, but solely on the ground that our evidence, especially in connection with the case in the United States in 1929, was based on a study of the movement of cash prices. Mr. Brownlee felt that future prices should have been used, since, in his view, they better reflect the long-term market trend.

Now, I suggest that his evidence reflects a misunderstanding of our position. Mr. Armstrong contended that, as soon as a foreign buyer noted an actual reduction in the cost of transportation, he would lower his cash bid price to that extent. In a weak market, that bid price, so lowered, would be accepted.

There can be no method of measuring this except by studying cash prices, since they alone reflect actual buying. When freight rates were reduced in the two cases quoted, the cash offers were reduced, the cash offers were accepted, because they involved no lower price to the farmer -- I think that is most important -- and the actual money received by the farmer was established.

Now, Mr. Brownlee, I submit, correctly stated that the futures market, if expecting a freight rate reduction, would discount it ahead of time, and they would know that there was going to be an increase or a decrease in the price of transportation of grain, because the tariffs are published in advance. That is precisely why, dealing with the rate reduction in the United States in 1929 as my example, Mr. Brownlee found that the futures market fell slowly, somewhat ahead of the single sharp decline in the cash market. I submit it must be evident that the cash market will act quickly in taking up the effect of a rate reduction; it will be in two days or so.



I suggest that Mr. Brownlee offered useful confirmation of Mr. Armstrong's opinion.

Speculators can make profits, if they are right, by discounting an expected fall in price. Farmers or other holders of actual wheat will certainly not sell cash wheat any more cheaply because they expect a freight rate reduction. The speculator will lower his futures bid, but the farmer will not do anything with his price. That is why I say you must look at the cash price, and the future price properly understood merely confirms what we are saying. Farmers do not have to take any lower price as a result of a rate reduction, while wheat dealers are protected against any loss when the cash price falls, since their holdings are hedged in the futures market.

Mr. Brownlee used, as you will recall, futures prices to show that the United States wheat market was in a weak position in May 1929. I submit it is exactly in such circumstances that we contend a reduction in freight rates will go to the buyer -- as happened at the end of May 1929 in the United States, and in Canada after the restoration of the Crow's Nest level of rates in July 1922. When I put it to him, Mr. Brownlee could only describe the instances that I was giving as mere coincidences.

Now, I think, my lord, that I should say this, that our position appears to me to be this: There are two ends to the chain; one is the absolute buyer's market, and the other is the absolute seller's market. At either of those poles the farmer does not pay the transportation cost. As the market situation moves toward one pole or the other the amount that he might pay will differ. The closer it is to either pole the less he will pay. That is why I think the extract I read from Mr. Armstrong's evidence is so important, that generally speaking you had a buyer's market





in wheat, so that, while there is almost always a buyer's market in wheat, it may not be absolute, but it is close to being absolute, and there may be at one time the farmer paying some of the transportation cost -- sometimes a little more, sometimes a little less; but, with all due respect, I do not think that Mr. Brownlee's evidence is worth much when he says that the buyer pays the transportation cost from Fort William but the farmer pays it to Fort William. I say things do not work that way in the wheat market. That is just a convenient way of establishing a base price, and it is an idea that apparently gives people an easy rationalization of the net that the farmer receives. I say it is a false rationalization.

Now, I think it incumbent upon me, my lord and Mr. Commissioner Angus, to deal with the evidence on cross-examination of Mr. Jefferson, Mr. McDougall and Mr. Armstrong on this point of Crow's Nest rates, and I think I can do it in a sentence. I submit that the cross-examination does not produce anything that I can find or that can be found to destroy one jot or tittle of the clear, factual and experienced-opinion direct evidence which they gave.

The Canadian Pacific recognizes that it is a possibility that the western farmer, under circumstances beyond his control, may require assistance. Assistance, however, should not be given by fixing at an unduly low level one segment of the total transportation cost, thus establishing unnecessary rigidity.

That fixing unduly low freight rates does not enure, at least in whole, to the benefit of the western farmer, was made clear by Mr. Armstrong. The ocean shipping owner or the overseas buyer may well be getting the advantage of an unduly low freight rate on grain for export.





On grain consumed in Eastern Canada, the advantage may be going to those who eat bread in Ontario and Quebec and the Maritimes.

I submit proper marketing policies are the greatest insurance the western farmer has of getting the proper price for his wheat, if he has wheat to sell and currency difficulties can be overcome. If the western farm economy, in spite of proper marketing policies, requires assistance, that assistance should be given in a way that is sure to reach him by a direct payment.

Canadian Pacific recognizes that there is a deep-rooted feeling among western farmers that they require the Crow's Nest level of rates. Dr. Britnell, in answer to Mr. Covert, said that they would require them even if wheat went to \$5.00 per bushel (Volume 104, page 19212).

Mr. Harries, in answer to Dr. Angus, could not see a departure from the Crow's Nest level of grain rates except, possibly, if there was inflation to the degree that has taken place in France ( Volume 104, page 19355.). That western farmers want some special advantage when they do not need it, may well be questioned. That western farmers think they have an advantage, on the other hand, when they have not one, is understandable in view of the use that has been made of the Crow's Nest Pass rates as a political issue. The western farmer certainly has no less interest in adequate and efficient railway transportation than other Canadians.

THE CHAIRMAN: Please tell me what you mean there by "political issue". Did we have any evidence about that?



MR. SINCLAIR: Well, my lord, I think the most cogent evidence I can give you is something that happened during the course of these proceedings. We were discussing and we had before your Commission, the question as to whether you would go into the matter of the compensatory nature of the grain rates. Now, while you had that under advisement and it was sub judice, there was a meeting up the hill of 32 western Liberal members, and they issued to the press a statement, and I quote from that Canadian Press dispatch dated Ottawa, November 15, 1949:-

"Thirty-two western Liberal members of the House of Commons said today that they would fight any recommendation to remove western Canada's low freight rates on grain and grain products which has been proposed before the Royal Commission on Transportation. The proposal has been made by the Canadian Pacific Railway, which contends that the Statutory: Crow's Nest rates are not paying their way. Mr. Leslie Mutch (an advertising man from Winnipeg, representing Winnipeg South - he is a Veterans Affairs Parliamentary Assistant,) today issued a statement signed by the thirty-two members declaring that a recommendation for any change in the freight rates would be met head-on by them in a no-quarter fight. The statement said: 'Western members have discussed the C.P.R. threat at length and desire to protest any action which would seek to implement the C.P.R. Brief in this regard'".



Now, my lord, there is a declaration from thirty-two members of Parliament before they know the facts. When you have got a matter sub judice, they go forth and make this statement, and then we have Mr. Brownlee. What does he say to us? "Take your case to Parliament, get your just and reasonable rates from Parliament." That is what I mean by a political issue, my lord.

THE CHAIRMAN: Did any other group of Parliamentarians take issue with these thirty-two men you mentioned, take the other side of the case?

MR. SINCLAIR: Not that I know of.

THE CHAIRMAN: I see. When you said it was made a political issue, I thought you meant a conflict between politicians on one side or the other. You didn't mean that?

MR. SINCLAIR: Oh, no. As I say, the western farmer certainly has no less interest in adequate and efficient railway transportation than other Canadians. That the Crow's Nest Pass rates have a psychological basis was demonstrated by Dr. Britnell. He looked upon any departure from the Crow's Nest level of rates, even on grain moving from Fort William to Eastern Canada for consumption there, as the "thin edge of the wedge"; would not even discuss it on the merits. We had demonstrated to us in Dr. Britnell, the expert witness who, on his own admission, became the spokesman for a psychological attitude.

Now, my lord and Mr. Commissioner Angus, in the concentrated evidence of earlier this week opposing the proposal of the Canadian Pacific regarding the





so-called Crow's Nest level of rates, your Commission may well have forgotten that there are others besides the Canadian Pacific who do not support the principle of rigid statutory rates or imposing on traffic other than grain an additional burden through the maintenance of unduly low grain rates. Now, I would like to suggest that there is a large section of the Canadian public that pays the freight charges who are against the principle of Section 325 (5) and (6) that we are discussing. My friends may say; few have come forward to say so. It is easy for me to understand why they have not. Undoubtedly the western farmer has considerable purchasing power. His attitude to this issue is known. Many business enterprises are acutely conscious of that fact. I can also understand, with the complexities of grain marketing and the somewhat extensive history involved in this matter, many would feel that they were not sufficiently informed to stand what would certainly be a rigorous cross-examination from provincial and western interests.

I recall, however, to your Commission, the position taken by the Canadian Manufacturers' Association. Their evidence on this point will be found in Volume 30 and it runs generally from pages 5707 to 5902. The Canadian Manufacturers' Association made it abundantly clear that in their view the existence of the Crow's Nest level of rates was causing higher rates to be charged on other traffic, and wanted that situation rectified.

Also appearing before the Commission in Toronto was Mr. Paul on behalf of the Canadian Industrial Traffic League. Now, I say both those organizations



represent large shippers and people who are of the first rank of citizens in our land. Mr. Paul's evidence will be found in Volume 31, pages 5960 to 6068. On behalf of his organization Mr. Paul made it clear that they were against statutory rates because such rates were removed from the jurisdiction of the Board. That

is at pages 6018-9. Mr. Paul's organization wanted to have the Statute repealed and these rates, like all other rates, put under the jurisdiction of the Board. That is at page 6063. Mr. Paul's organization supported the view put forth by the Canadian Pacific that if the farmers needed special assistance they should receive it directly from the Dominion Government.

When the Commission heard evidence in Vancouver, Mr. Alton appearing on behalf of the British Columbia Feed Manufacturers' Association, and Mr. Bolton appearing for Pacific Mills Limited, also expressed the view that unduly low rates on grain should not be maintained. Mr. Alton stated at page 3063 that he was not in favour of the principle of establishing rates by Statute. During Mr. Covert's examination of Mr. T. C. Norris appearing for the Vancouver Board of Trade, Mr. Norris took the position that the granting of benefits through maintaining low rates was wrong in principle. It was his view that a level of rates established in 1897 to go on for all time without taking into account changing economic conditions, was detrimental. His evidence on this point will be found in Volume 15 at pages 2793-2795.

I would also ask your lordship to recall the Maritime Transportation Commission. I don't want to place



their position too highly, but I think a consideration of what they said and how they stood and what was said by Mr. Matheson, is of some benefit, recognizing that he was not going to take any adverse position to his friends through rate cases for so long a time if he could possibly do so.

I submit Canadian Pacific has made a clear case for the repeal of the proviso to Section 325 (5) and sub-section (6) of 325. I would ask that to be the recommendation of your Commission in its report to Parliament.

In support of our submission, I say we have proved what we propose will not be adverse to the western agricultural economy. As a westerner, I earnestly beseech you to include in your recommendation to Parliament, that, if assistance is required at any time by the western farmer to maintain his economy in balance with the rest of the Canadian economy, that assistance be granted to him by Parliament, and that such assistance be paid to him in such a manner that he is sure to receive it.

I submit that retention of grain rates under rigid Parliamentary control will prevent such rates being dealt with on the merits, and this will undoubtedly be detrimental to all traffic other than grain and, I submit, to Canada as a whole.

I submit it is abundantly clear that the retention of the Crow's Nest level of rates as now operative in our rate structure, cannot be supported on a sanctity of contract basis; it cannot be supported, in my earnest submission, on a basis of necessity; nor can it be supported





on economic principles. Retention of grain rates under Parliamentary control might be supported on a psychological basis, but I say that they should not. Thank you, my lord.

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(Page 19818 follows)



ARGUMENT BY MR. SPENCE

May it please the Commission, Mr. Sinclair has covered the historical and economic aspects of the problem of the Crow's Nest rates. I propose to direct my argument to the objects, needs and results of the change advocated in our submission. To begin with I should like to emphasize - and this is perhaps the main theme and essence of my whole argument -- that what we are proposing is based fundamentally and entirely upon justice and reasonableness. It is our submission that, while in 1897 the rates established on grain and flour were only slightly below a just and reasonable level, the passage of time accompanied by unprecedented changes in the conditions under which both the shippers and the railways find themselves has caused the statute to enforce now an unjust and unreasonable result.

We say that any statute that fixes permanently and rigidly any rate level in a changing economy will inevitably before long bring about an injustice to one party or the other, the shipper or the carrier. It is for this very reason, the need of adjustment of rates from time to time in a changing economy, that Canada has a regulatory body set up for the purpose of studying the needs of shippers and carriers, of establishing basic principles of fair dealing between the railways and the public, and of applying those principles to the regulation and adjustment of the rate structure.

It is a strange anomaly - and one that I submit should persist no longer - that Canada, having set up this body to see justice done in the matter of rates, still withholds from the benefit of that justice some of the most important rates in the tariffs.

As one who has been appearing almost constantly before



the Board of Transport Commissioners for about the past fourteen years, I should like to say a few words to this Commission about that Board. I think it is time that, in view of what has been said in the last two or three years not only before this Commission but in the press and elsewhere, some frank words were spoken.

The Board of Transport Commissioners has, since its inception in 1903, had upon its panels many eminent and learned men who have given their best efforts, some of them over a very long period of years, to developing and building up a sound body of jurisprudence upon the subject of regulation of railways. To that end they have not only exercised their best judgment but they have drawn, to the extent that they felt proper for application in this country, upon tried and established principles of regulation of both Great Britain and the United States.

One of the most eminent of these gentlemen was Dr. S. J. McLean who had the initials after his name of C.M.G., M.A., LL.D., and Ph.D. Dr. McLean, between 1899 and 1901, had prepared a report for the Minister of Railways and Canals on the subject of rate regulation in Great Britain and the United States. In 1901 he had been appointed by the Dominion Government a Commissioner to report on railway rate grievances in Canada. On the basis of his report, submitted to Parliament in 1902 as Sessional Paper 20A, the legislation providing for the organization of the Board of Railway Commissioners was drafted and became embodied in the Railway Act.

Dr. McLean continued as professor of transportation and commerce in the department of political economy of the University of Toronto until 1908 when he was persuaded to leave that post to become a member of the Board. He served constantly upon the Board from that time until





the year 1938. It is his judgments in practically every freight rate case over that period of 30 years of the Board's existence - and there were hundreds of those cases - that laid the foundation of the Board's jurisprudence in ratemaking as we know it today. Those judgments were in every case careful, well reasoned and impartial expositions and decisions upon the problems of ratemaking.

The jurisprudence so established by the Board over this period of years has of course been subject to some change and extension and elaboration since the time of Dr. McLean, but the foundation is still there in its entirety, and I challenge my learned friends of the provinces to point to any single basic principle of the Board's jurisprudence that is not founded firmly upon justice and impartiality as between the public and the railways.

It is very easy for parties who are dissatisfied because they have not had all of their arguments accepted by the Board to make the statement that the Board has applied wrong principles, that its attitude is either too legalistic on the one hand or, on the other hand, a complete departure from the established principles of ratemaking. I have in mind particularly the judgment of the Board in the 21% case which led to so much agitation by the provinces. I submit, however, that if that judgment is examined point by point and reason by reason in the light of what the Board over a long period of years has found to be the wisest and most reasonable methods and principles of ratemaking, it will be found neither to follow slavishly and unreasonably the previous judgments of the Board, nor on the other hand to abandon those principles where they could be properly applied



to the case presented.

Under the provisions of the Railway Act the Board is placed in the position of supervising and regulating the rates and tolls charged by the railways. In the ordinary course it is the function of the railways to propose the rates to be charged but the Board is placed on guard by Parliament to ensure that no rates shall be allowed that are unjustly discriminatory or unjust and unreasonable. There have been cases to hold that it is the Board's function to fix and maintain reasonable rates, and I need only point to the case of Canadian Pacific Railway vs. the Province of Alberta et al, 64 C.R.T.C., 129, which will be off the press in a few days, in which the Supreme Court of Canada has once again affirmed the principle of the Board's duty to fix just and reasonable rates, and that this is a function that the Board must exercise.

The proposal that we are advancing in respect of the Crow's Nest rates is essentially simple. It is that since we have a Board equipped, qualified and experienced in finding what are just and reasonable rates, that Board should be entrusted with and required to determine what are just and reasonable rates for the carriage of grain and flour in western Canada, and that such rates when found should be applied. There have been statements in some of the briefs read to this Commission that if that course were taken shippers of grain would be left defenceless against the railways. Nothing could be further from the truth. The interests of the shippers would be carefully guarded by a body whose primary and almost only reason for existence is to see to fair play between the public and the railways. What these shippers and their representatives here overlook, or perhaps will not see,





is that just and reasonable rates are rates that are just and reasonable to those shippers themselves.

We have no thought of suggesting anything that is not from every aspect just and reasonable to the shippers as well as to the railways, and the only inference that can be drawn from the opposition that is made to this proposal is that the representatives of the shippers before this Commission do not want justice and reasonableness to be applied. I might remind the Commission of the point to which Dr. Britnell came when he was cross-examined on this question by Mr. Sinclair; at page 19238 Mr. Sinclair asked him:

"Q. Now, may I ask you again as to whether the Western Provinces are prepared to support the payment of just and reasonable rates, whatever that amount might be, for the movement of grain from country elevators to the lakehead?"

The answer that Dr. Britnell gave was:

"A. If you will let me define the 'just and reasonable' "--

I submit there can be only one definition of what is just and reasonable, and that definition must be established by a skilled and impartial tribunal. If you are going to reject that tribunal's finding and substitute for it the view of one of the interested parties as to what he would accept you are not going to arrive at a just and reasonable result. Consequently I say again that the very fact that there is opposition to the imposing of a just and reasonable level of rates shows that the opponents prefer not to have justice applied. It then follows without question that in their view an injustice is now being done to the railways. Dr. Britnell's theory seems





to be that there is one standard of justice for shippers  
but another standard of justice for <sup>the</sup> railways that carry  
their goods. I submit that this is contrary to every  
concept of law under which we live, and that it should  
not be recognized or condoned by this Commission.

(Page 19825 follows)



We have been asked to define exactly what powers we propose shall be put into the hands of the Board of Transport Commissioners in respect of grain rates. My answer is that the Board should have exactly the same powers and duties with regard to those rates that they have with regard to all other rates in Canada; that is, that the Board is bound to maintain those rates at a just and reasonable level, a level that will be just to the shippers as well as to the railways.

The question has been asked as to what is meant by a just and reasonable level, and what factors are to be taken into account in determining what is just and reasonable. It is not for the railways nor for the shippers to define what is just and reasonable; in fact, I do not think that any definition could be framed that would precisely delimit, for application in general to every case, what was just and reasonable. It is for the Board to determine in every individual case, by a balancing of every relevant factor, what is the just and reasonable result in that particular case. When I say "every relevant factor", I would point out that the Railway Act does not, should not and cannot say what is just and what is unjust for purposes of application to the myriads of different circumstances, conditions and factors that may be presented in varying degrees to the Board in the cases that come before it. It is very evident, from a study of all the cases on this question that have come before the Board throughout its history, that there are never two cases alike, and that the Board must always be bound to use its own skill and experienced judgment in weighing those factors.

I have been questioned by this Commission as to whether we are now proposing that the Board shall now be



made an economic planning board. The first point raised by that question is what is meant by an economic planning board. My understanding of the term is that it means a board whose duty it is to study the whole economy of Canada and to lay plans and to make recommendations designed to further the economic progress of the country. I would not suggest for a moment that the Board of Transport Commissioners be required to undertake such a study; and certainly in our proposals as to the Crow's Nest Pass level of rates, there is nothing that would require the Board to form itself into such a body. On the other hand, I do say that the Board would be and should be at full liberty to take into account the influence of economic factors upon the question of what is just and reasonable.

THE CHAIRMAN: Do you say that the Board has that power now?

MR. SPENCE: Yes, my lord. The distinction that I make is very similar to the distinction between a court of law and a legislative body. A court takes the facts and circumstances that are applicable as it finds them and determines the case before it on that basis. A legislature, on the other hand, decides what the law shall be in the future. It plans ahead and decides what should be made the law for the purpose that it hopes to achieve. The Board of Transport Commissioners, like a court, takes economic facts as well as all other relevant facts as it finds them, and decides what is just and reasonable on the basis of those facts.

THE CHAIRMAN: What has the court to do with economic facts? You said that, as a court does, the Board takes economic facts.

MR. SPENCE: Like a court, it takes the facts that are before it, including the economic facts.





THE CHAIRMAN: The economic facts?

MR. SPENCE: Yes, my lord.

THE CHAIRMAN: Would that not depend on the nature of the case before the court?

MR. SPENCE: Yes, the relevant economic facts. But I will come to that point in a moment.

THE CHAIRMAN: The difficulty is this. We are dealing now with a body that has to proceed, from day to day, to the same task of seeing that just and reasonable rates are imposed.

MR. SPENCE: Yes.

THE CHAIRMAN: Do you say that, running through all that, they must take into account economic considerations as well as others?

MR. SPENCE: Yes, my lord. I am coming to that point in a moment.

THE CHAIRMAN: Whereas, in the case of a court, the court may have a case once in a while, more or less often, where there is some economic question involved but it does not necessarily pervade the court's work from day to day as it does the work of a board such as this.

MR. SPENCE: No, my lord. There is a different type of case coming before the courts, as a rule, from the type coming before the Board. All I say is that there is this general comparison. The Board and the courts take account of the facts placed before them. Some of those facts may be economic facts; other facts may be entirely divorced from economics. But it is just the facts that are placed before the Board, and that it is aware of, that it takes into consideration.

THE CHAIRMAN: We as a Commission cannot pass over lightly or, putting it more strongly, we cannot ignore what the powers of the Board are, on what principle the



Board proceeds, whether or not the different parties before us now are satisfied with those powers as they are and whether they want them altered in any respect.

MR. SPENCE: Yes.

THE CHAIRMAN: I read to you yesterday the latest pronouncement we have been able to find on that question by the Board itself. As you will remember, it is on pages 53 and 54 of the 21 per cent judgment.

MR. SPENCE: Yes, my lord. I was coming to that matter in a moment, if I might be allowed to proceed.

THE CHAIRMAN: There the Board does say that it is not entirely free. Just to refresh your memory, I will read to you again this passage. After discussing these various factors, some of which you yourself have mentioned, the Board says:

"In so far as these different considerations are concerned, the Board can give effect to none of them in connection with any rate question... They --"  
That is, the Board.

"-- are concerned simply and wholly with the question of the reasonableness of the toll which the railway company is seeking to collect for the carriage of a given commodity, irrespective of how it is made, or whence it comes."

MR. SPENCE: Yes, my lord.

THE CHAIRMAN: How do you bring economic factors into that kind of a limitation?

MR. SPENCE: If I could go ahead for a moment, --

THE CHAIRMAN: Yes, I want you to.

MR. SPENCE: --I am coming to that point. I have read that case. I have that case in mind.

THE CHAIRMAN: I read it for that purpose, to indicate the advice that I was seeking to get from you.





MR. SPENCE: I say that economic facts, as distinguished from economic planning are considered by the Board; that is, the Board considers the facts but it does not attempt to change the facts. The Board has said many times that it has no right to act as an arbiter of industrial policy and that <sup>it</sup> is not empowered to put in rates simply to develop traffic. That, of course, would be planning for the future and it would obviously be a matter for a different kind of tribunal, namely, one that could decide with authority whether it was in the best interests of the country that industry, for example should be encouraged to develop in one area and should be discouraged from developing in another area. Such a power is quite obviously beyond the jurisdiction of the Board of Transport Commissioners since it involves a consideration of many factors not related in any way to transportation.

As your lordship pointed out, the Board has said the same thing in another way in pointing out that rate-regulating commissions have no right whatever to attempt to equalize geographic, climatic or economic conditions. Any attempt of this kind would be the same sort of planning for the future and would involve the power to rearrange at will the industry of the country. However, the mere fact that the Board cannot attempt to equalize economic conditions, for example, does not mean at all that it cannot take into consideration the economic conditions as well as any other conditions that actually exist and that have a bearing upon the question of whether a particular rate is a just and reasonable rate. I have in mind --

THE CHAIRMAN: Pardon me a moment, Mr. Spence, but it has been said before us -- and you have heard it from time to time -- that one of the economic considerations in question here is that the wheat in question goes forward to





other parts of the world, to a common market with wheats coming from elsewhere and that there it has to compete, so we are told, with wheat from, say, the Argentine, Australia, Russia and various countries, travelling different distances and at different rates and so on. It has been said that Canadian wheat, in respect of distance, is placed at a great disadvantage and that that is one of the reasons why this very contract was entered into, in order to ensure cheaper transportation than would otherwise likely have prevailed. Do you say that the Board, as it is now, if we asked them tomorrow to fix rates here, would take those economic factors into consideration?

MR. SPENCE: I think they would have an influence on the Board's decision, yes, in this way; the Board always takes into consideration the value of the product or the value of the commodity, in fixing a rate. The value of the commodity is influenced by its marketability. There is therefore that influence in the fixing of the rate, in arriving at what is a just and reasonable level.

THE CHAIRMAN: Are you quite sure that, if the Board were to fix a rate which, on the face of it, was very low and were to give as its justification that this low rate was fixed within Canada in order to allow this wheat to get overseas as cheaply as possible, in order to compete there with other wheat from areas not so far distant from the market and so on, you would be satisfied with such a finding and that you would say that was a proper exercise of discretion by the Board?

MR. SPENCE: If the Board based its decision upon the finding that it was just and reasonable to fix the rate for grain at a low level, taking into account existing circumstances --



THE CHAIRMAN: Having regard to the ultimate destination of the grain.

MR. SPENCE: That is one of the circumstances.

THE CHAIRMAN: Do you think that the Board would be justified in fixing rates here on considerations of that sort?

MR. SPENCE: It is not for me, my lord, to say whether the Board --

THE CHAIRMAN: I am not asking you that question in the void. I am asking it because we are told that considerations of that kind actuated the parliament of Canada in 1897.

MR. SPENCE: Yes, my lord.

THE CHAIRMAN: Could similar considerations actuate the Board in fixing rates, properly and legally?

MR. SPENCE: I think so, my lord.

THE CHAIRMAN: You would be satisfied with that?

MR. SPENCE: If a rate were fixed by the Board, taking that consideration as well as all other considerations into account, we would be satisfied that the Board was exercising its best judgment in deciding what was just and reasonable in those circumstances; that is, just and reasonable to the man who had to market his goods in Europe.

THE CHAIRMAN: Despite what I have read to you several times from the last decision of the Board, in which they say that they are concerned simply and wholly with the question of the reasonableness of the toll which the company is seeking to collect for the carriage of a given commodity, irrespective of how it is made or whence it comes. You would add to that statement, "or whither it is going"?

MR. SPENCE: There is always --

THE CHAIRMAN: What I should really like to know is this. I should like to know whether you, speaking for the





Canadian Pacific Railways, or anybody else, speaking for any other interests such as the provinces or the various organizations, wishes any amendment to be made to the Railway Act in order to alter<sup>it</sup>/in any way either by extending or by restricting the powers of the Board in the fixing of freight rates.

MR. SPENCE: The fixing of rates on grain?

THE CHAIRMAN: Any rates.

MR. SPENCE: Any rates?

THE CHAIRMAN: Including rates on grain.

MR. SPENCE: I think I can say definitely that we are not proposing any change whatever in the powers of the Board as to their duty to fix just and reasonable rates.

THE CHAIRMAN: You would leave the Act as it is?

MR. SPENCE: We would leave the Act as it is; yes, my lord.

THE CHAIRMAN: All right.

MR. SPENCE: That, I should add, is because we think that they have all the necessary powers now in order to arrive at just and reasonable rates.

THE CHAIRMAN: You think that this last statement or paragraph which I have just read does not show any limitation whatsoever?

MR. SPENCE: I think that that statement is only saying that the Board is not an economic planning board. It is not planning for the future. It cannot rearrange the industry of the country. It cannot equalize economic conditions, geographic conditions or climatic conditions.





It has to take those conditions as it finds them, but it can bear in mind that those conditions exist when it is finding the just and reasonable rate.

For example, let us consider the steel companies in Canada -- the Dominion Steel and Coal Company at Sydney, the Steel Company of Canada at Hamilton, and the Algoma Steel Company at Sault Ste. Marie. Now, if the Board were to be fixing a rate or if it had a complaint from the Dominion Steel and Coal Company as to a rate from Sydney to say Toronto, the Board would take into account, no doubt, that the Dominion Steel and Coal Company had the best reason in the judgment of its directors for establishing its plant at Sydney; that is, the plant at Sydney is close to the source of supply both of coal and iron ore. The Algoma plant is close to the iron ore deposits, and has coal available across the lake by water, so it is established there because it thinks that that is a good place to set up its plant.

THE CHAIRMAN: Does not the western producer of grain go to Alberta, Saskatchewan and Manitoba with the same consideration in mind, that that is where he can grow wheat?

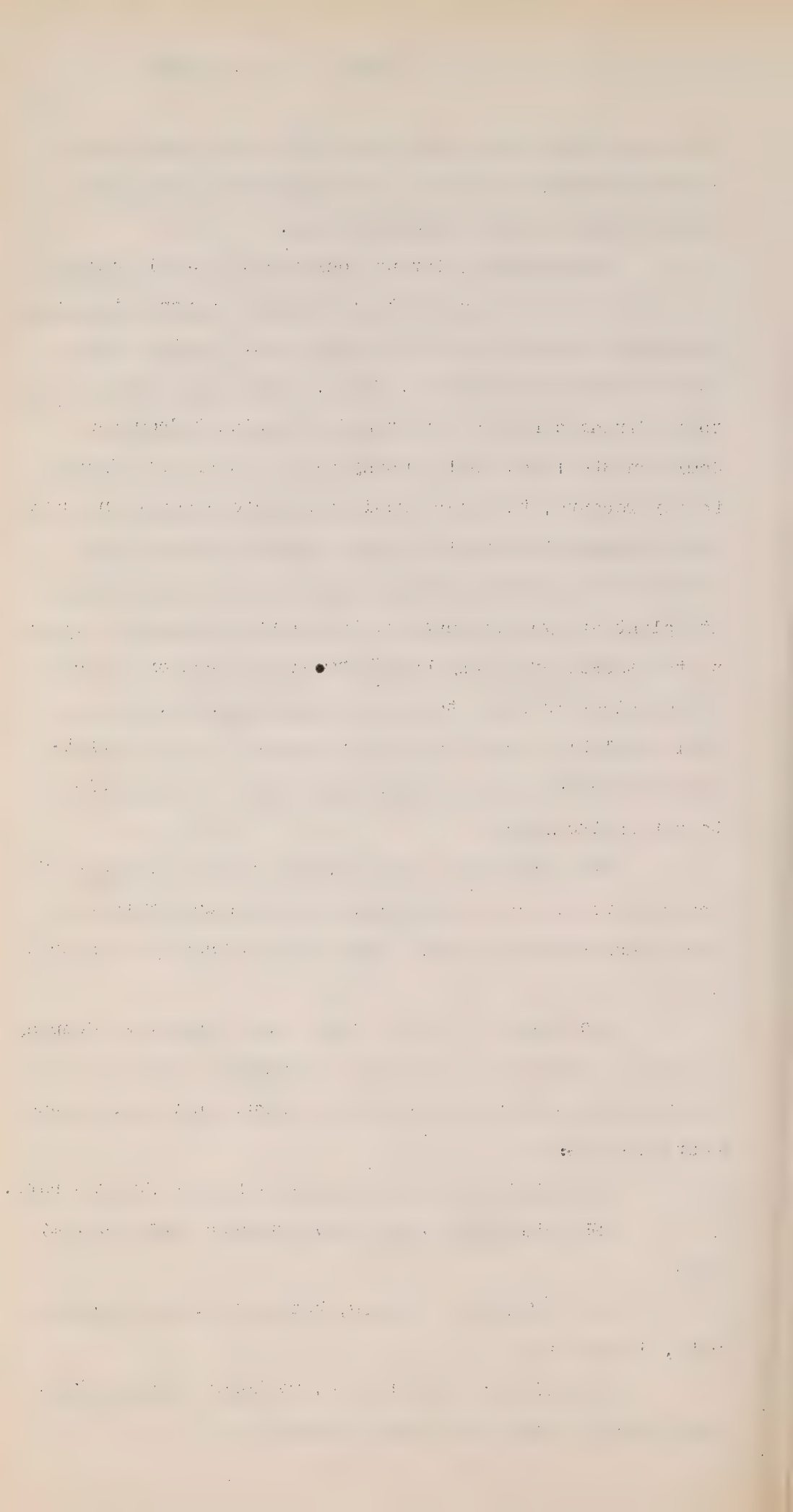
MR SPENCE: Yes, my lord. Then the Steel Company of Canada establishes its plant in Hamilton, because it is in the middle of its market, so it thinks that that is the best place for it.

THE CHAIRMAN: They all pay the same freight rate.

MR SPENCE: But they have greater distances, my lord.

THE CHAIRMAN: I know, but they all pay the same rate, do they not?

MR SPENCE: Possibly so, my lord; I do not know how in actual fact their rates balance up.



THE CHAIRMAN: Well, that is the complaint. Those of them which are farthest away from the centre of market complain that they are compelled, for instance, to submit to the same increases horizontally, which alters their respective positions.

MR SPENCE: Well, I am not speaking at the moment of horizontal increases. I would like to leave that to Mr. Evans to speak of.

THE CHAIRMAN: No, I am not raising it now. I just meant to say that whatever the rate is today is the same; whether the load, the carload, comes from Sydney or comes from Hamilton or comes from Algoma, the same rates are charged, are they not?

MR SPENCE: I do not know, my lord; I cannot say. But what I was putting up was just a hypothetical case at the moment.

THE CHAIRMAN: They are subject to the same percentage increases.

MR SPENCE: Oh, yes, I would think so. But the Board in dealing with those three steel companies cannot say, "Now, we are going to equalize your geographical conditions." The Board says, "We cannot give the Dominion Steel and Coal Company the same rate in dollars -- that is, the same charge in dollars -- to Toronto as <sup>the</sup> Hamilton company has," but the Sydney company must have taken into account that it was at a distance from its market when it put its plant there, and they were balancing the economic advantages in locating there, and all that the Board can say is, "We will give you a rate, we will not allow a rate to be charged against you that is not fair and reasonable to you in all the circumstances."

COMMISSIONER ANGUS: Mr. Spence, does it follow from what you have just been saying that if there is a



national policy with an economic planning aspect to it, it cannot be realized through the Board but must be imposed on the Board?

MR SPENCE: I would agree with that.

COMMISSIONER ANGUS: Is not the whole argument really whether these rates are such a policy?

MR SPENCE: I would think so, yes. I think that if planning is to be made for the future, if the economic structure of the country is to be altered or influenced, it should be by design of another body rather than the Board. But if such a body were set up there might be some difficulty as between the jurisdiction of the Board and the jurisdiction of the planning body.

THE CHAIRMAN: Isn't that your very complaint here, Mr. Spence? You say that in effect, in regard to these particular freight rates, they have been fixed by another body, that is, by Parliament, with considerations in mind which you do not think proper ones, because you say they are considerations of economic policy. Isn't that right?

MR SPENCE: Yes, they have been fixed on considerations of economic policy, but I say that those considerations of economic policy are much broader than the transportation question, and that they should not be dealt with as part of the transportation question, that the rates on grain in Western Canada should conform to the structure of the rest of the transportation set-up in Canada, and that if in planning the economy of Canada something else must be done, it should be done apart from freight rates, it should be done as a matter directly between the Dominion Government and the farmers, not getting the railways mixed up in it, because getting the railways mixed up in it causes all kinds of repercussions in the rest of the freight





rate structure and causes injustice to the other shippers of Canada.

Now I would like to go on to point out that almost every factor that the Board does take into consideration in deciding its cases is in fact an economic factor. For example, the value of the commodity is an economic factor that is invariably taken into consideration by the Board. The value of the commodity is itself influenced by a number of economic factors. The cost of service provided by the railway is another economic factor. The ability of the commodity to move in the greatest volume at the best return to the railway is determined by the balancing of a whole series of economic factors. All of these matters may be quite properly taken into account by the Board in determining what is the just and reasonable rate to be applied to the commodity in question.

Now, your lordship and Mr. Commissioner Angus questioned me yesterday as to whether I considered that the Board could vary a rate in accordance with the fluctuations in the value of the commodity. I think one portion of the answer to that question may be found in the case of Saanich Fruit Growers' Association v. Express Traffic Association, 43 C.R.C. 362, at page 366, and I might say this part of the case is quoted---

THE CHAIRMAN: What year was this, Mr. Spence?

MR SPENCE: I haven't it here, my lord.

The case is quoted in the pamphlet copy of the Board's judgment of March 30, 1948, in the 21% Case, at page 45 of the judgment. It is pointed out in the Saanich case that rates that bore a fixed relationship to the fluctuations in the prices of commodities would have no permanency, and might vary from day to day; such a principle of rate-making would be impracticable, and has never been accepted in any

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country as a valid and proper principle.

THE CHAIRMAN: I see I have it here. They say the proposal was that rates should be fixed to bear a relationship to the fluctuations in the prices of the commodities. Well, they put that aside. They say:

"Rates so fixed would have no permanency, nor would they necessarily have any relation to the cost of service or other factors that are controlling in the establishment of rates, and this has never been accepted in any country as a valid, practicable, or proper principle of rate-making."

That is what you were referring to?

MR SPENCE: Yes, my lord.

I would like to point out, on the other hand, however, that section 325(5) of the Railway Act gives powers to the Board to change, alter---

THE CHAIRMAN: Pardon me a moment. Since you have given that case to us, I note it goes on to say:

"General increases and decreases in rates have been based upon cost of operation to which the carriers are subjected. Cost of transportation does not go up and down in step with commodity price levels and fluctuation in commodity price levels"  
and so on.

MR SPENCE: Yes, my lord. I was just going to speak of that.

THE CHAIRMAN: All right. Well, you gave us the citation.

MR SPENCE: I wanted to point out that subsection 5 of section 325 of the Act gives power to the Board to change and alter rates as changing conditions or cost of transportation may from time to time require.

THE CHAIRMAN: Well, that is the Act.



MR SPENCE: Yes, my lord.

THE CHAIRMAN: We have it in the last judgment of the Board how they interpret that Act. That is why we were anxious to know here whether your company wished to leave the Act as it is, having regard to the interpretations placed upon it by the Board itself, to alter it in any way. You say you do not want it altered in any way; you want it left as it is?

MR SPENCE: Yes, my lord, because we think it is quite adequate in its present form to do justice at all times.

THE CHAIRMAN: In the event, then, of these particular rates, the Crow's Nest Pass rates, being handed over to the Board, you would have the Act applied to them just as it is applied to all rates?

MR SPENCE: Exactly, my lord; exactly, yes.

Now, speaking of the power of the Board to change and alter rates as changing conditions or cost of transportation may from time to time require, I would point out that in the ordinary course wide fluctuations usually occur more or less simultaneously in the values of various commodities in conformity with periods of prosperity or depression. Now, railway costs follow to some extent the same fluctuation, so that the changes or variations in rates ordered by the Board to accord with changing conditions have usually been by means of general rate increases and decreases. However, I do not think that there is anything in the Act that would prevent the Board---

THE CHAIRMAN: Isn't that important too, bearing on the whole question, that the Board acts by general impositions? It provides for a general increase or a general decrease.

MR SPENCE: Yes, my lord.





THE CHAIRMAN: And then the railways are left free to operate beneath the ceiling so established, which may be higher or lower.

MR SPENCE: Yes, in cases of competition. But I do not think that there is anything in the Act that would prevent the Board from taking---

THE CHAIRMAN: So far as we have been shown up to the present, the only commodity which appears to have received exceptional treatment by the Board is this commodity of coal -- isn't that so? -- the transportation of coal within Canada?

MR SPENCE: That was mentioned by Mr. Covert yesterday, yes, my lord.

THE CHAIRMAN: That in itself is a subsidized transportation, is it not? Does not the Government subsidize the transportation of coal?

MR SPENCE: Just on Alberta coal to Ontario points.

THE CHAIRMAN: That is what I mean.

MR SINCLAIR: Some in Nova Scotia, I think.

MR FRAWLEY: Some?

THE CHAIRMAN: It was a matter that Mr. Covert called to our attention again, yes. It is special arrangements in order to allow coal from Alberta to get into Ontario, and the freight rate there is fixed differently from the ordinary manner of fixing freight rates, and it is part of economic planning, if you wish to call it so, because the Government comes in too and subsidizes in part the transportation, does it not, Mr. Sinclair?

MR SINCLAIR: What happens, my lord, is that a rate is fixed, and then the Government---

THE CHAIRMAN: A freight rate is fixed.

MR SINCLAIR: The Government pays some money over and above what the shipper pays.



THE CHAIRMAN: To the railway.

MR SINCLAIR: Yes.

MR FRAWLEY: To the railway.

MR SINCLAIR: Out of the rate as fixed the Government pays a portion of the rate.

MR O'DONNELL: They call it a subvention.

THE CHAIRMAN: To the railway.

MR SINCLAIR: Yes.

THE CHAIRMAN: And then the rate is fixed at so much per ton, is it not?

MR SINCLAIR: Yes.

MR O'DONNELL: We had some evidence in Fredericton, I think, my lord, as to the rates in the Maritimes concerning coal, too.

MR SINCLAIR: That was all done under the Railway Act.

MR FRAWLEY: What was done under the Railway Act was a subvention.

MR SINCLAIR: No; they fixed the rate.

MR SPENCE: Well, my lord, I have not made a search through the case to see if there have been any other examples such as the coal; I think they could be found.

THE CHAIRMAN: I do not think any other examples were brought to us.

COMMISSIONER ANGUS: No.

MR SPENCE: I do suggest that there is nothing in the Act that would prevent the Board from taking into account changed conditions in a particular industry, if this change in conditions had a bearing on the---

THE CHAIRMAN: You say changed conditions in a particular industry; I am not so sure that that was what -- do you think that would be a proper interpretation of subsection 5 of section 325?



MR SPENCE: It just says changing conditions, my lord; it has no limitation on that. Usually these fluctuations occur, as I said, in general with the railways and all together, and that is what requires variation in freight rates upward or downward. But I suggest that if changed conditions in a particular industry had a bearing upon whether the rate charged was a just and reasonable rate, we might then be back at the same point that we were when the rate was first established -- that is, to a consideration of whether the rate was a just and reasonable rate in relation to the value of the commodity.

THE CHAIRMAN: You say a rate is never just and reasonable in so far as the railway is concerned unless it is compensatory?

MR SPENCE: Yes, my lord, I say that.

(Page 19842 follows)





---UPON RESUMING

THE CHAIRMAN: Very well, Mr. Spence.

MR. SPENCE: Now, to sum up the answer to the question whether I considered that the Board could vary a rate in accordance with fluctuations in the value of the commodity, I think that the best answer I can suggest to the question is that while day-to-day or month-to-month fluctuations in value cannot be considered in fixing rates, there is not reason why long . . . term changes in conditions, including economic conditions, should not be given weight in arriving at just and reasonable rates.

THE CHAIRMAN: Have we had any such experience in Canada?

MR. SPENCE: Usually it has been by general rate increases.

THE CHAIRMAN: No, but I mean experience of those conditions. Take, for instance, one in the thirties, the period of years there where economic conditions were very bad. Isn't that so?

MR. SPENCE: Yes, my lord.

THE CHAIRMAN: Now then, would the Board have been justified, do you think, during that period in reducing freight rates on grain on account of the conditions?

MR. SPENCE: I think that the conditions might well have been taken into account if the Board had had those rates under its jurisdiction at the time.

THE CHAIRMAN: They might have said: "The wheat market having fallen so desperately low, other factors too having militated against them, we will bring down the freight rates". Do you think that would



would have been a proper consideration.

MR. SPENCE: What the Board probably would have done, my lord, would be to say: "Now, the railways' costs have fallen and the railways are now charging an unreasonable rate upon a commodity whose value has also fallen. We think that taking into account all the considerations, all the factors in the case, there should be some adjustment in these rates". It is very hard to draw the line of course.

THE CHAIRMAN: Of course, we are hoping that no such condition will ever come again, but if it should, well - -

MR. SPENCE: Actually what usually happens - -

THE CHAIRMAN: What you say today is of some importance, you see.

MR. SPENCE: What usually happens in such cases, my lord, is that the railways themselves, seeing the depressed condition of an industry, will reduce the rates voluntarily.

THE CHAIRMAN: Did the railways do that in the thirties?

MR. SPENCE: No, my lord, not on grain, because grain was under statutory rates.

THE CHAIRMAN: But you further reduced them?

MR. SPENCE: No, my lord.

COMMISSIONER ANGUS: Mr. Spence, how would that tie in with the suggestion that the farmer should get a subsidy from the Government if he needs it? Would the Board be likely to take the position that the farmer may be in a bad way now, but that is the Government's business, they ought to give him a subsidy; or would they



take their action first and then the subsidy be measured to make up the difference? I mean, there are two sources from which relief might come to the farmer. Are they to co-operate in any way or is it just to be haphazard which acts first?

MR. SPENCE: It is very difficult to draw the line, and the Board of course must consider the matter very carefully and must take all considerations into account. The Board and the railways together might bring the rates down to a point, but that point would be the out-of-pocket cost, I say. Once the rates have come down to the out-of-pocket cost, the Board could not take any further action and impose non-compensatory rates on the railways.

THE CHAIRMAN: When you say out-of-pocket cost, you mean a little more, don't you?

MR. SPENCE: And certainly something more.

THE CHAIRMAN: To compensate?

MR. SPENCE: I would like to go one step further with the theory advanced by the opponents of our proposal. They appear to have the fear that the application of just and reasonable rates to the grain traffic will do some harm to the producers. Now, I ask this Commission, what possible harm can be done to anyone so long as he receives treatment that is just and reasonable to him? I use the word "harm" exactly as Dr. Angus defined it yesterday. If a proposal is made to raise the shippers' freight rate, he can rest assured that the rate will not be raised unless it is just to him that it should be; nor will it be raised if it is unreasonable to him that it should be.





If in those circumstances his rate is raised, he has lost nothing to which he was justly entitled. So long as he can be confident of this treatment, what possible objection can he have to control of that kind?

COMMISSIONER ANGUS: Is the answer perhaps this, Mr. Spence, that anyone's idea of what his income ought to be is apt to be a little on the optimistic side, that is to say, we are told for instance, that the standard that labour would set for instance, for income on the railway is one that the farmers think a bit excessive; and sometimes the farmer's idea of his income in terms of parity, taking the best year into account, looks a little excessive to others.

MR. SPENCE: Yes, sir.

COMMISSIONER ANGUS: And isn't the farmer's apprehension that he may be told he is prosperous when he thinks he is not according to his standard; he is afraid of someone else's judgment of his income?

MR. SPENCE: Yes, Dr. Angus, and that is why we say an impartial and skilled tribunal should decide such questions, decide on the merits after an examination of everything that enters into the case, to determine as between the railways and the shippers what is a just and reasonable balance to fix. .

Now, the shippers of all other commodities in Canada have been receiving this treatment from the Board for many years. Why should the grain shipper maintain that he should not receive it?

Now, of course it may be said that the producer of grain is in a different position to the producer of any other commodity, and that is undoubtedly true to a considerable extent; but it is a matter for which the

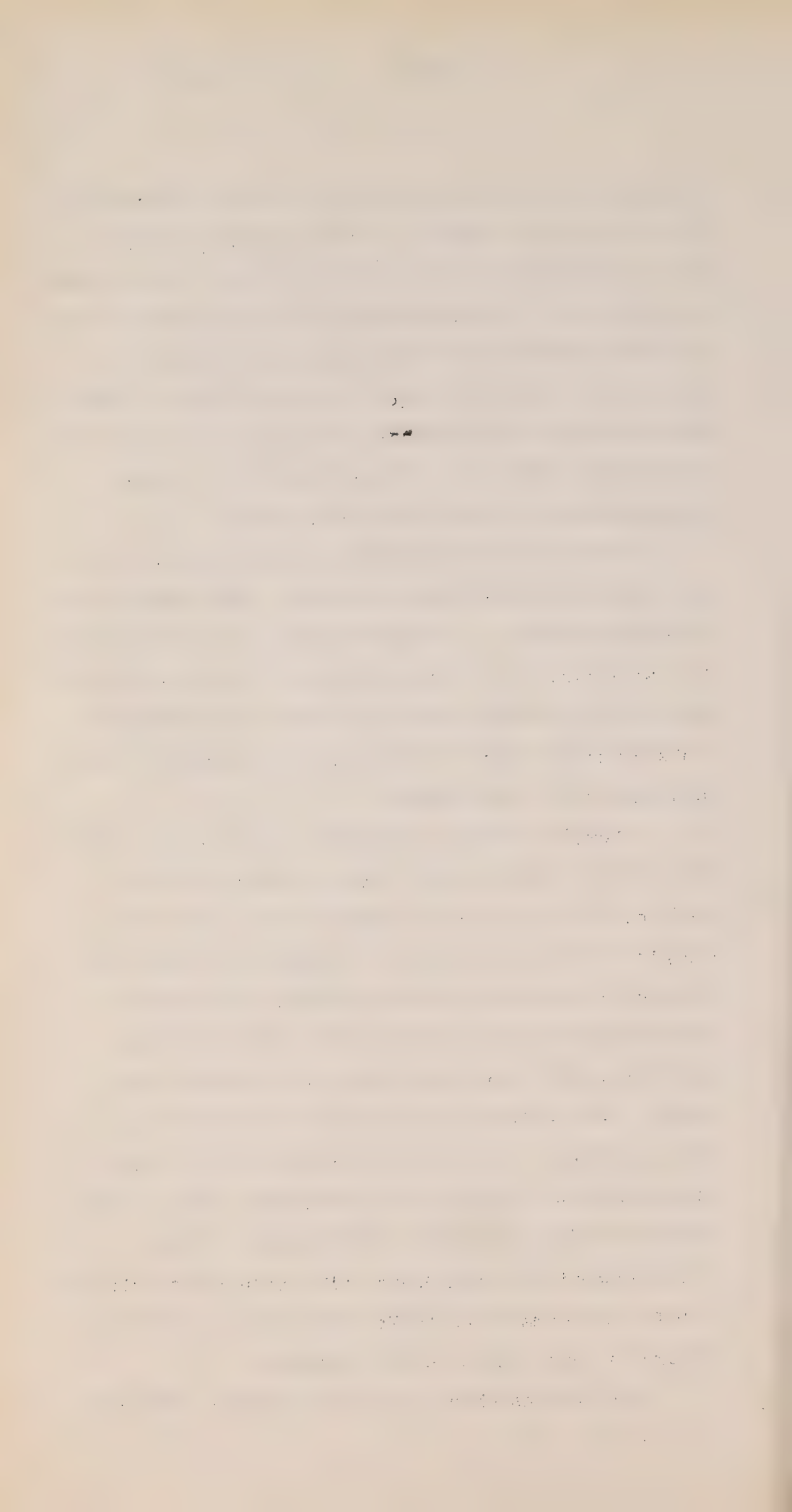


railways are in no way responsible and over which they have no possible control. If due to these factors, grain producers require assistance at any time or from time to time, I strongly urge that the railways are not the medium through which that assistance should be given. That is a matter that involves only the Dominion Government and the producers, and it is a subject that should come within the jurisdiction of an economic planning board, if one were established.

It includes consideration of many factors that are completely unrelated to railways. The business of a railway company is transportation, not the distribution of subsidies. The railway company is neither equipped nor qualified to see to the equitable distribution of subsidies; nor should it be made an instrument of the Government for that purpose.

Now, Mr. Sinclair of course has dealt with this phase of the matter, and I don't propose to repeat what he has said, but I do want to come back to my original theme, that what we are asking is just and reasonable rates on grain and flour, undiluted and unqualified and undistorted by any hidden subsidy, and established and regulated on an adequate and proper level without the complication of extraneous considerations. It is only when the Board has under its control all rates on all commodities, that it can function with its greatest effectiveness in the establishment and maintenance of a proper rate structure. I refer the Commission to Mr. Jefferson's evidence at Volume 74, page 15136 on that subject.

So long as there is in the middle of the rate



structure a rigid and unchangeable body of rates with which the Board cannot deal, the Board's adjustments of other rates are seriously hampered.

The level of all freight rates should be based upon what is necessary to pay the cost of movement and to contribute something to the overall revenues of the railway company, indeed to get the railway in a sound and healthy condition. So long as one sector of the rate structure is held artificially below the point at which it is contributing its fair share to the cost of movement and the railway's requirements, the Board is compelled to maintain the balance of the rates at a level that is higher than it should be. In all of the general freight rate cases that have been before the Board, the decisions have been arrived at after a careful consideration of railway costs, railway revenues and railway requirements. The Board has also studied the ability of the shippers to pay the contemplated rates and has given full effect, to the limit of its ability, to the principle with which we are all agree: that freight rates in Canada should be maintained at the lowest level consistent with the sound financial condition of the railways.

There is no place among the factors to be applied by the Board in such cases, for political considerations. Nevertheless it cannot be questioned that the policy urged by the opponents of our proposal, that grain rates be maintained at a level below just and reasonable rates, is purely and simply a matter of political considerations. So long as that policy is maintained, it means that all other freight rates in Canada are to some extent interfered with and increased





by these political considerations. I submit that that is a situation that is harmful to the Canadian economy as a whole.

Now, my learned friends of course have euphemistic terms for these political considerations. They speak rather of national policy, but while I would not think of denying that there are and should be broad grounds of national policy that would relate to the agricultural interests of this country, I submit that there is no national policy that requires or should require the charging of unjust and unreasonable rates to anyone, whether he is a shipper of grain or a shipper of any other commodity. I would remind the Commission that there are agricultural interests elsewhere as well as in the Prairies, and I say that national policy should see that they also get fair play.

Now, I suggest that we are dealing with two separate and distinct national policies: one, that the agrarian interests of this country should be encouraged and maintained in a sound and prosperous condition for the benefit of the country as a whole; and the second one, that the railways should equally be given an opportunity to function in such a way as to maintain themselves in a sound and efficient condition.

Those two national policies have existed side by side for many years. They existed in 1897 when the Crow's Nest Agreement was made, and at that time each policy as it was made effective worked with and assisted the other. However, due to the rigidity in grain rates that was imposed by the Agreement and the



Statute, the situation has now arisen under which the mechanics, used in applying an agrarian policy have overlapped, so to speak, and become entangled with the railway policy.

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(Page 19850 follows)



It is our view that there is no need for change in either of these policies as basic policies, but that the only change is one in the mechanics of application of the agrarian policy in order to remove the conflict that now exists between the two policies.

In 1897 the rates on grain imposed by the statute were very close to the just and reasonable level. In 1950 it is obvious to everyone, except those who will not see, that those same rates are below any just and reasonable level that could be determined on the conditions of 1950. National policy still requires the furtherance of agricultural interests, and all that we are proposing is that the method of making that policy effective be modernized so as to remove the conflict that has developed with the national policy on railways.

There have been several discussions before this Commission as to how the new rates on grain and flour would be put into effect if our proposal was adopted. Some provincial counsel have attempted to suggest that the field would be left wide open for the railways to put into force any level of rates that they desired. I should like to take a few moments to point up the absurdity of such arguments.

To begin with, I would remind the Commission that there are already tariffs in effect and on file with the Board covering rates on grain and grain products on the Crow's Nest Pass Basis. Those are within the category of special freight rates governed by the provisions of Section 325(5) which in turn states that rates on grain and flour shall be governed by the provisions of the agreement made pursuant to Chapter five of the statutes of Canada, 1897.

These tariffs being already on file, the normal





procedure would be to change them, if change became permissible, in the same way as any other special freight tariffs would be changed, that is, by following the provisions of Section 331 of the Act. Subsection 3 of Section 331 provides as follows:

"When any such special freight tariff advances any toll previously authorized to be charged under this Act, the company shall in like manner file and publish such tariff thirty days previously to the date on which such tariff is intended to take effect: Provided"--

And I should like to underline these words --

THE CHAIRMAN: Mr. Spence, isn't that where reduction comes in?

MR. SPENCE: No, the reduction clause is the previous one.

THE CHAIRMAN: "When any such special freight tariff reduces any toll previously authorized to be charged under this Act, the company shall file"--

MR. SPENCE: Perhaps I have the number wrong. I think that is subsection 2, isn't it?

THE CHAIRMAN: I thought you were reading that.

MR. SPENCE: Subsection 3 I was reading.

THE CHAIRMAN: Oh, I see.

MR. SPENCE: "When any such special freight tariff advances any toll previously authorized to be charged under this Act, the company shall in like manner file and publish such tariff thirty days previously to the date on which such tariff is intended to take effect: Provided"--

This is what I would to underline.

-- that where objection to any such tariff



"is filed with the Board, the burden of proof justifying the proposed advances shall be upon the company filing said tariff."

It will be seen from this section how groundless are allegations such as that made by Mr. Frawley at page 15275 of Volume 75 that the railways would be, as he said, free as a bird to put into effect any rates that they chose. In the first place, the railways are compelled to give 30 days notice of any proposal that they make which is more than ample time to allow anyone to notify the Board that he proposed to object.

THE CHAIRMAN: In your brief at page 189 you say, "Before fixing the rates on grain"-- you have in mind subsection 3 of Section 331, have you?

MR. SPENCE: Yes, my lord.

THE CHAIRMAN: You say:

"Before fixing the rates on grain and grain products in western Canada, Canadian Pacific would expect a most thorough and detailed study by the Board."

MR. SPENCE: Yes, my lord, the rates would not be fixed until the Board had made a study.

THE CHAIRMAN: That would be a departure from the ordinary practice, would it not, that you just read to us in Section 331?

MR. SPENCE: I submit not because rates are not fixed --

THE CHAIRMAN: You would file your tariff.

MR. SPENCE: Yes, but that would not fix the rates.

THE CHAIRMAN: The Board then would consider it, and if any objections were made to it they would hear those objections.



MR. SPENCE: Yes.

THE CHAIRMAN: In that case the onus would be on you to show that the new tariff is a just and reasonable one. Is that so? That is the way you would proceed?

MR. SPENCE: I think we said to your lordship when Mr. Frawley raised the point that we would be prepared to go further than that and have the Act amended if he desired it to have an examination by the Board before we even had the tariff printed.

THE CHAIRMAN: I thought that was what your brief meant, you see. It says:

"Before fixing the rates on grain and grain products in western Canada, Canadian Pacific would expect a most thorough and detailed study by the Board."

MR. SPENCE: Yes.

THE CHAIRMAN: You would not proceed as ordinarily?

MR. SPENCE: I think perhaps there is a little misunderstanding between Mr. Frawley and ourselves due to the --

THE CHAIRMAN: You go on to say:

"In developing the cost of handling grain in western Canada Canadian Pacific has voluminous working papers. These can be made available to the Commission if desired, and of course, would be made available to the Board on any study that they may undertake."

You have in mind there before any new rates were put in they would be studied by the Board; is that not so?

MR. SPENCE: Yes.

THE CHAIRMAN: You would not proceed summarily under subsection 3 you have read to us?





MR. SPENCE: If Mr. Frawley desires it that way--

THE CHAIRMAN: It is not what he desires. I am trying to interpret what you say yourselves on page 189.

MR. SPENCE: I think what we intended to say was that before any such rates came into effect, before any such rates were fixed --

THE CHAIRMAN: You would begin by filing the new rates as usual?

MR. SPENCE: Normally we would, yes.

THE CHAIRMAN: What would you do in this case? I want to know what you would do in this case.

MR. SPENCE: That was the intention in this case.

THE CHAIRMAN: You would proceed under subsection 3 of section 331; you would file the rates and then the Board would have the rates before them, and only in the case where some objection was taken would there be an inquiry and then the burden of proof would be on you to show that your rates are justified.

MR. SPENCE: Yes, my lord. We are quite prepared to proceed in this way, that before any tariff is even filed with the Board, if it is deemed desirable we will have this question raised with the Board, place all our working papers at the Board's disposal and have the fullest investigation possible.

THE CHAIRMAN: So in this particular case you would not follow the procedure of section 331, subsection 3?

MR. SPENCE: No, because this contemplates --

THE CHAIRMAN: That is what I wanted to know.  
MR. SPENCE: Section 331, subsection 3 contemplates that the tariff shall be filed with the Board.

THE CHAIRMAN: In this case if you were to



obtain what you are asking for the present tariff would remain effective until the Board had had an opportunity to study the question with the information you say you can give it, and so on.

MR. SPENCE: Quite.

THE CHAIRMAN: And hear the whole case and then fix a new schedule of rates; is that not right?

MR. SPENCE: Yes, my lord.

THE CHAIRMAN: All right.

MR. SPENCE: Just along that line, I should like to point out that this was stated to the Commission not only in the submission that your lordship has just read but also in the statements that were made by Mr. Evans at pages 15275 to 15282 and by Mr. Jefferson commencing at page 15265 and running to page 15282. It was there said that we would welcome and in fact expect a complete survey of the situation by the Board before any proposals for amendment of the rates would be accepted.

THE CHAIRMAN: Yes, that is what I thought. In this case you do not intend to follow that usual procedure.

MR. SPENCE: In conclusion I should like to emphasize the importance to this country and to the railways of maintaining freight rates on all commodities at the lowest level consistent with efficient transportation service. One thing that causes our attention to be directed particularly at this time to the Crow's Nest Pass rates is that we are in a period when rising costs have compelled the railways to apply for freight rate increases. It is not impossible that this trend will continue into the future, and that at some time we may again be obliged to apply for higher rates. That possibility



possibility is brought much closer at the present time by the existence in the rate structure of a large block of rates that have not contributed their fair share to past increases and will not have any effect in moderating the necessity for increases in the future unless they are allowed to take up their just and proper portion of the burden.

As pointed out in our main submission to the Commission at page 161 of Part I, and in Mr. Jefferson's evidence at page 15158, volume 74, the increase of 21 per cent granted by the Board in March, 1948, would have been only 18 per cent if the Crow's Nest rates had been upon a just and reasonable level. Similarly, if those rates had been carrying their share of railway costs, it would not have been found necessary for us to apply for as much as 20 per cent in the case that followed.

The provinces have in the course of their arguments in these rate cases suggested that by the increases asked for we will, as they say, price ourselves out of the market. I do not concede by any means that this point has yet been reached, but I do say that if the process is continued, with the whole impact of rising costs being placed upon one portion of the rate structure, that portion will reach the point of diminishing returns very much sooner than if an equitable distribution of the costs were made.

This is a possibility that cannot be regarded with equanimity because, if it does occur it cannot help but bring a grave crisis in the affairs of the railways. With these considerations in mind I suggest to the Commission with great respect that it should recommend the amendment of section 325(5) and the repeal of section 325(6) of the Railway Act as proposed by the Canadian





Pacific.

In putting forward that proposal we feel that it is in the best interests of the economy of this country as well as the efficiency of our railways. It will restore for the benefit of the whole of the public using transportation services a just and reasonable basis of rates, and will in due course have a moderating influence upon the general rate level.

As a final word, I would remind the Commission that this is one of the very rare instances upon which we have had an opportunity to put forward our views on the subject of these rates. For that reason it is most important that this Commission, which has gone into the matter at considerable length, should make to parliament as full a recommendation as possible of its findings. Mr. Brownlee observed to the Commission on Wednesday that if the railways needed adjustment of the Crow's Nest Pass rates they had a forum and that forum was parliament. May I remind the Commission that this is exactly where we are at this moment. Parliament gives study to detailed and complex matters such as these through its royal commissions, and it is through this Commission that we are at the present moment presenting to parliament our submission that there is serious and urgent need for the acceptance of our proposal. Thank you.

. . . . .



ARGUMENT BY MR. MacPHERSON

THE CHAIRMAN: In this case are you speaking for the province of Saskatchewan only?

MR. MacPHERSON: Yes.

THE CHAIRMAN: The government of the province of Saskatchewan?

MR. MacPHERSON: The government of the province of Saskatchewan. Before we proceed I wish to file with the Commission a resolution that has been forwarded to me by what is known as the advisory committee on freight rates in the province of Saskatchewan.

THE CHAIRMAN: What do they call it?

MR. MacPHERSON: The advisory committee on freight rates.

THE CHAIRMAN: Advisory to whom?

MR. MacPHERSON: It is advisory to the government really or to the Minister, but it is representative of the following organizations in the province of Saskatchewan: Saskatchewan Associated Boards of Trade; Saskatchewan Farmers' Union; Moose Jaw Board of Trade; Saskatchewan Retail Merchants' Association; Regina Local Council of Women; Saskatchewan Co-operative Producers Limited; Saskatchewan Executive, Trades and Labour Congress of Canada; Saskatchewan Dairy Association; Saskatchewan Federation of Agriculture; Saskatchewan Federated Co-operatives; Co-operative Union of Saskatchewan; Saskatchewan Association of Rural Municipalities; Saskatchewan Urban Municipalities Association; Saskatchewan Branch, Canadian Manufacturers' Association; Saskatchewan Motor Dealers' Association. They all have representatives on this committee, and this resolution is simply endorsing the joint provincial brief which has been filed. I should like to put the resolution on the record.



THE CHAIRMAN: All right.

MR. MacPHERSON: It reads:

"WHEREAS the welfare of the people of Saskatchewan depends, directly or indirectly, upon the income derived from its agricultural industry and

WHEREAS the production of grain, particularly wheat, holds the dominant position in Saskatchewan agriculture, and

WHEREAS the wheat-producing areas are situated at great distances from markets in which Western grain must be sold, and in which it must compete with the grain from other countries and

WHEREAS the marketing of Western Canada's wheat is vital to the whole economy of the dominion and is, therefore, a matter of continuous concern to Parliament, and

WHEREAS the wheat producing areas must rely entirely on rail transportation over great distances for the carriage of grain

THEREFORE be it Resolved: that the Saskatchewan Advisory Committee on Freight Rates, representative of producer, consumer and business interests in the province of Saskatchewan as indicated below, endorse the Joint Submission of the Governments of the Prairie Provinces to the Royal Commission on Transportation respecting Crow's Nest Pass grain rates and urge upon the Royal Commission on Transportation appointed under Order in Council P.C. 6033, the vital necessity of maintaining freight rates on grain and grain products under statutory control and at levels not higher than those provided for in the Crow's Nest Pass Agreement.

Carried Unanimously."





I may say I believe there are two or three other briefs that have come from Saskatchewan from the Rural Municipalities Association, the Urban Municipalities Association and from the Associated Boards of Trade. They had no witnesses here on the issue, but I take it that the briefs will be received by the Commission and considered in considering the whole matter.

We have heard the submissions of the Canadian Pacific through Mr. Spence and Mr. Sinclair, and I congratulate them personally on the submissions they have made, disagreeing as I do with them. I realize Mr. Sinclair had had a very heavy responsibility during the present week, and I am glad to be able to say that in my view he has discharged that responsibility with credit to himself and with credit to his clients. In saying that I do not agree of course with what he has said.

He opened : by reference to the fact that the provinces were here dealing with this issue with a measure of reluctance, and he referred to a memorandum that had been submitted to the Government of Canada in the summer of 1948. The fact is that that memorandum was submitted not by the three premiers of the prairie provinces, but by the premiers of seven of the provinces, the maritime provinces and the province of British Columbia as well.

He used the term "demands". They were not demands; they were representations made to the Government of Canada by the seven premiers, and the terms of reference to which he refers, and which he takes as a reason indicating a reluctance on the part of the provinces to deal with this issue, were merely the same form of reference that had been used in another transportation commission in this country, and it was submitted for that reason and for that r



that reason only. Actually the representation as first made to the government was not accepted by the government, but after all this is a democracy, and later there was a certain convention in Canada at which certain resolutions were passed, and then the government passed an Order in Council, and we are here and we are discussing the matter.

Page 19860 follows



And may I say this to him, that in so far as the people of Western Canada are concerned, I do not know of anyone in that country who will run away from a discussion of the Crow's Nest issue on any occasion at any time.

I want to refer to another matter, because Mr. Sinclair used it in his argument, and then Mr. Spence near the close of his argument used something of the same nature. They were talking of the political flavour of it. Mr. Spence said, "It is purely a matter of political consideration." Well, is there anything wrong with that? Politics, after all, is said to be the science of government, so there is no reason why it should not be considered, should not be dealt with -- no reason, unless there is something sinister or something ulterior, and the alternative of being silent simply because a proposition is made by the Canadian Pacific would be intolerable. There is no reason why it should not be discussed, and, while I have not been privy to anything that Mr. Mutch or his group did, at the same time I cannot see why they should not have views and why they should not express them.

Yesterday Mr. Sinclair stated very emphatically, at page 19750, that the company, the Canadian Pacific, was still prepared to carry out its contract. He repeated that; he said it could be reinstated. Now, is this suggested to this Commission seriously as a solution now? Would it be helpful to the Commission in any way to have the agreement reinstated? He admits, to use his phrase, that there would be a measure of chaos. Would the Canadian Pacific be indifferent to chaos in the country? It surely cannot be suggested as a solution or anything in the nature of a solution, nor can it be helpful when they assert that now they are prepared to live up to their contract and they are prepared to reinstate it.



The first of these is the fact that the  
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When Mr. Spence talks today of railway policy and of national policy, then we realize that railway policy and national policy may have run together for a time, but national policy as such, certainly in a democracy, must prevail if it comes into conflict with railway policy, and railway policy must be regarded purely as a part of national policy and must not be subservient to it.

The proposition that the railways make is a proposition which they have stuck to very generally in their evidence and in their submissions, and it is consistent with what we find in their outline of argument, paragraphs 80 and 81. They propose that without exception the Board of Transport will deal with the freight rates on all commodities, in section 80. In 81 they recognize that national policy enters into the picture in the matter of the case of the producers of grain in Western Canada, but then they indicate that it should be dealt with in some other way, and they expand that in their submissions here, as they do in their regular submission, by submitting that it should be done by means of subsidizing the industry and not making any payment to the railway by way of subsidy.

In the Railway Act there is provision for freight rates on one commodity and one only by name, and that is grain. In the infinite variety of commodities that are transported by rail in this country there is one and one only that Parliament has reserved unto itself for the purpose of controlling rates, and that is grain.

Now, it must follow that when Parliament decreed by statute that this one commodity should be so dealt with, Parliament regarded it as a matter of national policy, that it should fix transportation charges on it. It is an express exception from the jurisdiction of the Board of Transport, and I am submitting that this is not by way of accident.



I am submitting that the fact that we have subsections 5 and 6 in section 325 is not the result of the whim or the caprice of any person or any political party. It is there because Parliament has spoken. And I submit to you -- and we will refer to it further -- that Parliament on this issue has spoken not only once but three times: First in the original statute of 1897, then in the amendment to the Railway Act in 1922, and then in the amendment to the Railway Act in 1925. In each instance national policy was set forth along this line, that Parliament recognized that the production of this commodity and the continuation of the production of this commodity was of such consequence in this country that Parliament as a court, and Parliament alone as a court, should deal with the question of the transportation rates which would be paid in respect of the commodity.

Now, our friends say, and they say very frankly, to the Board, "We want wheat treated just as any other commodity. We want this exception taken away. We want this matter dealt with by the Board of Transport," as they say, "according to the established ways of making rates by the Board of Transport." Mr. Spence in his argument this morning has been very frank; he stands firmly by the status quo. The Board, he says, is experienced, the Board is equipped, the Board is judicial. He stands by the jurisprudence of the Board; he defends every sentence of the 21% Case judgment and the references therein. He says, "That is the sort of tribunal that we say in future should deal with grain rates. Parliament should abandon its control over these rates. Parliament should cease to formulate national policy dealing with these rates, and these rates should be fixed the same as they are on any other commodity that is carried." That is their submission.

Our submission, to the contrary, is that the court



which now deals with it, the High Court of Parliament, is the court that should continue, and that it is a matter of the greatest importance in the national economy, and that national policy should be determined and should be formulated by Parliament, that it cannot be formulated by a Board of Transport; and once you get into the field where you are determining national policy, as you are in a matter as important to the whole national economy as in wheat, then I submit there is only one court that can logically and properly and fairly deal with it, and that is the court which now deals with it.

These subsections themselves, 5 and 6, to which they object, are twenty-five years old; they have been there since 1925. There have been changing governments in that interim, changing political parties in government. There has been no change in the subsections. It remained a part of national policy. And the sections themselves stem from the agreement, which is fifty-three years old, to which both the company and the Government were parties.

I think it might be well to read the proviso to 5 and 6, to indicate how wrapped up the section is with the agreement of 1897 and to show that the spirit and the fact of the agreement is still alive in these subsections. This is subsection 5, the proviso:

"Provided, that, notwithstanding anything in this subsection contained, rates on grain and flour shall, on and from the twenty-seventh day of June, one thousand nine hundred and twenty-five, be governed by the provisions of the agreement made pursuant to chapter five of the Statutes of Canada 1897, but such rates shall apply to all such traffic moving from all points on all lines of railway west of Fort William to Fort William or Port Arthur over all lines now or hereafter con-





structed by any company subject to the jurisdiction of Parliament."

I will deal later with the complaint our friends have that this is an extension, but at the moment I am simply pointing out that these sections stemmed from that agreement, and what is confirmed here is that national policy which was set forth in that agreement, to which the company was a party, a policy which set in perpetuity the rates on grain and flour.

Then subsection 6:

"The Board shall not excuse any charge of unjust discrimination, whether practised against shippers, consignees, or localities or of undue or unreasonable preference, respecting rates on grain and flour, governed by the provisions of chapter five of the Statutes of Canada 1897, and by the agreement made or entered into pursuant thereto within the territory in the immediately preceding subsection referred to, on the ground that such discrimination or preference is justified or required by the said Act or by the agreement made or entered into pursuant thereto."

Now, my friends say, how did the Crow's Nest agreement come into effect?

THE CHAIRMAN: Mr. MacPherson, I think you can go on with that at a quarter to three.

---The Commission adjourned at 1:00 p.m., to meet again  
at 2:45 p.m.



Ottawa, Ontario,  
Friday, March 31, 1950.

AFTERNOON SESSION

MR MACPHERSON: My lord, when we adjourned I was about to refer to the agreement itself, the Crow's Nest agreement, which is Exhibit 261.

Might I point out in this connection that, while it is dated the 6th of September, 1897, the Act, chapter 5, was assented to on the 29th of June, 1897, so that the Act was assented to on the 29th of June but the agreement actually was not signed until September, but undoubtedly the details of the agreement had been determined a considerable time ahead, because all the clauses that are in the Act are incorporated in the agreement.

The three clauses in the agreement that I want to refer to particularly are 9, 10 and 11. Section 9 says this, dealing with local rates:

"So soon as the said railway is opened for traffic to Kootenay Lake, the local rates and tolls on the railway and on any other railway" -- and then it goes on, all the other railways with which it may be connected---

THE CHAIRMAN: Does that include the main line of the C.P.R.?

MR MACPHERSON: Yes.

" . . . as well as the rates and tolls between any point on any such line or lines of railway and any point on the main line of the Company throughout Canada, or any other railway owned or leased by or operated on account of the Company, including its lines of steamers in British Columbia shall be first approved by the Governor in Council or by a Railway Commission, if and



when such Commission is established by law, and shall at all times thereafter and from time to time be subject to revision and control in the manner aforesaid."

That is to say, this agreement was signed, this agreement was entered into, the legislation was passed with a knowledge on the part of both parties, the company included, that a Railway Commission was being set up -- the Board of Railway Commissioners which was ultimately established in 1903.

THE CHAIRMAN: I suppose there you answer the question, what would Parliament have done if there had been a Railway Commission.

MR MACPHERSON: That is my point, my lord, yes. You see, my lord, I am mentioning this because 9 deals with all commodities excepting those that are set out in 10, which are the thirteen, and I shall not name them. Then at the end it says:

"And no higher rates than such reduced rates or tolls shall be hereafter charged by the Company" upon these thirteen different classes.

THE CHAIRMAN: Pardon me a moment. Are these the thirteen westbound?

MR MACPHERSON: Westbound, my lord, yes; these are the thirteen westbound.

Then 11 deals with grain and flour, and ends:

" . . . and no higher rates than such reduced rates or tolls shall be charged after the dates mentioned on such merchandise from the points aforesaid."

So that at the time this agreement was entered into it was within the full knowledge of the company that there was being established, and that it was the intention of the Government to establish it, that which was the corres-





ponding body to the Board of Transport today, and all tolls were to be subject to the just and reasonable rates as they should be established by that body, saving and excepting the provisions made in 10 in respect of westbound on thirteen different named articles, and 11 dealing with the question of grain and flour.

Now, I am not going to take time to urge that this whole arrangement was consistent with the national policy . . . as it had been formulated, as it was being developed, the east-west formula, the idea of developing the east-west trade in the country, which was part and parcel of the arrangement in the first place and the national policy in the first place, the building of this road through Canadian territory to Vancouver.

I want now to refer briefly to a couple of the annual reports of the company to indicate to the Commission that in so far as this Crow's Nest Railway was concerned, and everything tied up with it, including Consolidated Smelters, it had its genesis long before 1896 and long before 1897.

There is a citation from the Annual Report of 1889 which is to be found in volume 104, at page 19187, which says:

"To prevent the invasion, by foreign lines, of the Kootenay District, in British Columbia -- a district rich in precious metals and other natural resources -- your directors have secured the control of the charter of the Columbia and Kootenay Railway Company, and agreed with the Provincial Government that the railway shall be built, about thirty miles in length, . . ."

Now, that is 1889.

Then we come to 1896, and in 1896 we find them saying this in their Annual Report -- and this is to be



found in volume 104 at page 19189:

"But even with these important additions to its facilities for handling the traffic of the mining districts, your Company will continue at disadvantage in competing with the American lines (which have already reached Nelson, Rossland and other important centres in these districts) until it shall have direct railway connections of its own. Until then the greater part of the mining traffic will be beyond its reach, and will continue to be as at present, carried by the American lines southward."

Then that Annual Report of 1896 -- and this portion of it is to be found at page 19190 of the record, says this, again showing national policy:

"The interests of the country at large are so much concerned in this question (of a Crow's Nest Pass Railway) that your Directors confidently expect reasonable assistance at the hands of the Dominion Government."

THE CHAIRMAN: Please read that last sentence again.

MR MACPHERSON: I will read it again, my lord:

"The interests of the country at large are so much concerned in this question (of a Crow's Nest Pass Railway) ~~that~~ your Directors confidently expect reasonable assistance at the hands of the Dominion Government."

And that was forthcoming in the agreement which was concluded and the Act passed in June of 1897.

Then, speaking of the House, when the bill was before the House in the spring of 1897, Mr. Blair, who was Minister of Railways, said this -- and it will be found at page 19194 of the record:

"The committee will have noticed that we have



sought to ensure the country a large measure of relief from the rates which have obtained since the Canadian Pacific Railway was started."

That was part of the statement made in the House by the Minister of Railways when this bill was introduced and when the agreement had been arrived at, but it was not actually signed until some months afterwards.

Now, there are many benefits that flowed to the company from that agreement. First of all, there is no question that they did secure a monopoly of the traffic in Southern Alberta and Southern British Columbia, South-eastern British Columbia. It may be, as Mr. Sinclair very graciously said yesterday, because of the efficient service that the railway gave, but in any event they were in there, foreign invasion was prevented, and they obtained and had and have today the very same monopoly.

When Mr. Jefferson was in the box I pointed out to him on one of the exhibits, the number of which I have forgotten now, along in that area the number of instances along the southern boundary of Canada where American railroads came up to the border and stopped without crossing the border, so that consequently there was no possibility of the development of that north-south traffic which might have developed had the American railways had their will. They obtained that monopoly.

My friend said yesterday, at page 19756, in connection with this matter, that there was some of this land that was British Columbia land, and he said, "You should not have anything to say about that at all." Well, in the agreement itself -- you will see it mentioned in the agreement, and of course it is mentioned in the Act -- there is reference to this land. Clause (h.) of the Act:

"That if the Company or any other company with





whom it shall have any arrangement on the subject shall, by constructing the said railway or any part of it, as stipulated for in the said agreement, become entitled to and shall get any land as a subsidy from the Government of British Columbia, then such lands, excepting therefrom those which in the opinion of the Director of the Geological Survey of Canada (expressed in writing) are coal-bearing lands, shall be disposed of by the Company "

Then there is a provision in clause (i.) that if they get this land they are to transfer 50,000 acres of it, of coal-bearing lands, to the Government in such fair and equitable manner as may be determined by the Governor in Council.

But my friend said yesterday, dealing with the question of land that had been granted to the Canadian Pacific Railway by the Government of Canada for the construction of the Canadian Pacific, "That is something apart, that does not enter into this at all." Well, my lord, I suggest that it does, and does very vitally and very materially. When they had constructed the Canadian Pacific Railway they had granted to them 25 million acres of land. True, some 6 million was surrendered to the Government of Canada in exchange for a cash payment of \$1.50 per acre, but they had the balance of this land, almost 20 million acres, and they had the railway built through this country from the Manitoba boundary to the Rockies, a country which had capacity for developing grain farming. They had this, and they had by this time 19 million acres of land left which they were anxious to sell. They were financing to the extent of their land, obtaining money, putting this land up as security. They were concerned with having the land sold, and concerned more particularly with having the land settled; and conse-



quently it was important to them, as it was important to the area and important to the Government of the country in seeing that the land was settled, that there be inducements offered and assurance offered so that men might come from various quarters of the globe to that part of the country. They entered into this agreement, and this agreement in section 11 provides that cornerstone of security which enabled the Canadian Pacific Railway, not satisfied with the work that was being done by the Department of Immigration, the Department of the Interior,

to set up its own Department of Immigration and Colonization -- going to Britain, going to Europe, going to the United States, going to all parts of the world, and bringing people there, on the assurance, as described the other day by Mr. Wesson, that there was a measure of security, notwithstanding the distance this country was from world markets there was a measure of security, guaranteed in the matter of transportation rates.

(Page 19873 follows)



They had to sell that land, and I am submitting to the Commission that notwithstanding what my friend says you cannot divorce one from the other. Not only was there benefit which flowed in that they obtained the British Columbia land, some three million acres, according to my information, but they were also in a position now where they could dispose of large quantities of the land that had been granted to them. They could settle that land, build branch lines, and get traffic, and that is exactly what they did.

So far as Consolidated Smelters is concerned I have suggested, not on this particular issue but in the cross-examination of Mr. Jefferson, and I suggest again that the whole question of Consolidated Smelters and the profits that flowed to the company as a result of their investment there must also be taken into consideration. It is all very well for my friend to say, as he said yesterday, that it was a high gamble at the time. The fact is that probably the whole going into the country was a high gamble, but in any event it was a part of this Crow's Nest development. It was a part of the prevention of invasion by foreign lines, it was a part of the whole scheme of things, and out of it came a very munificent return to the company as is shown in the statement which was filed and which is to be found in volume 78 at page 15699.

I should like to remind the Commission in this connection that the investment of the company was in all \$16,381,000, that the book value of the investment on the C.P.R. books is \$17,046,000, that the book value of the investment on their books is \$10.13 per share, that the book value of the company itself is \$25.61 per share or a total of \$83,000,000, and that the company holds





1,682,500 shares with a published book value of \$25.61 which in itself is worth \$43,008,000, or at market value on the 31st of December, 1939 it was \$80,000,000 and on the 31st of December, 1946 the market value was \$146,000,000, and the market value on the 10th of February was \$167,000,000.

THE CHAIRMAN: Do I understand you to say these are shares of the company owned by the company itself?

MR. MacPHERSON: Yes, these are the shares over which the Canadian Pacific has control. It does not own all the shares, but it has 52 per cent of the shares.

THE CHAIRMAN: What per cent?

MR. MacPHERSON: 51 or 52 per cent, and that amounts to 1,682,500 shares. What I am saying in connection with this matter is that, in so far as the Crow's Nest issue is concerned, there were many benefits that flowed to the company, and that all must be considered. I am suggesting that in the final analysis the least of the benefits that flowed to the company from the building of that road was the subsidy that they were paid, that the other benefits that flowed to them were much much greater in the long run to the company than the subsidy of \$3,600,000.

Yesterday my friend spoke about the arduous difficulty the C.P.R. had in getting started. If you will refer to exhibit 190 filed by the C.P.R. and take the year 1897 you will find in that year they had the highest net earnings that they had had in any year up to that date, \$10,000,000. You will find that the ratio of their net to gross earnings was 42-84, the highest of any year in their history. You will find in that year their income before fixed charges was \$10,474,000, that their fixed charges were lower than they had been in the previous



year. You will see that their net income was \$3,690,000 which was higher than any year in their history before. You will see that they declared for the first time a 4 per cent dividend and paid \$2,600,000 to ordinary shareholders, which was the highest they had ever paid. You will see that they sold in preference shares that year \$9,830,000 which was the highest they had ever sold.

THE CHAIRMAN: What is that year?

MR. MacPHERSON: 1897. Now, my lord, the agreement was concluded, and Mr. Sinclair admitted yesterday that at the time it was not a hard agreement. It certainly was not a snap agreement. It was one that had not been lightly entered into. It was one that had the consideration of the company and had the consideration of the government. On the evidence before the Commission it had been discussed with the government of Sir Charles Tupper before it went out of office, and it was only an agreement much the same in fact with variation as to subsidy as the one signed by Sir Wilfred Laurier instead of the one that was considered by Sir Charles Tupper.

It was not a hard agreement, and under the circumstances, and what developed for the company, what came out of this whole venture, I submit that it has not proved in any sense an improvident agreement at all.

My friend said yesterday that we of the provinces dislike comparisons with American rates. Mr. Sinclair said that at page 19785 of the record. Well, my lord, if you will turn to the appendix to Part I, page 104, you will see the rates that were in existence from Whately to Duluth in 1897 and the rates that were in force from Regina to Fort William at the same time.

THE CHAIRMAN: How did they compare then?

MR. MacPHERSON: The rate from Whately to Duluth was 40 cents and the rate from Regina was 23 cents.



When they talk of comparisons, they entered into an agreement providing not for the continuance of the 23 cents but after two years for a reduction of three cents to 20 cents in perpetuity at the very moment when the American rate between their own chosen points, Whately to Duluth, was 40 cents. If it were suggested that it were a hard agreement today I would submit that it is not. We have got to consider, as I put it to Mr. Jefferson, and as I think I put it to Mr. Armstrong, that the men who were on the board of the Canadian Pacific were able and shrewd men, Strathcona, Van Horne and Shaughnessy, who were afterwards presidents of the road, and at that time were directors. The agreement itself is signed by Sir William Van Horne.

THE CHAIRMAN: I suppose as we go on you will meet this argument about the alterations to the agreement. At that time everybody must have believed that it was satisfactory.

MR. MacPHERSON: I am coming to that. It was a natural consequence that men like those whom I have named should have seen that as the land was sold and as the country was settled branch lines would be constructed, and as branch lines were constructed new shipping points had to be established, and as new shipping points were established, from 1897 right up until 1924 there never was a suggestion as to the Crow's Nest rates not obtaining at any single solitary shipping point. The Crow's Nest rates were given voluntarily to every new point that was established, and those rates applied and were not challenged until 1924.

Yesterday my friend, Mr. Sinclair, pointed dramatically to the miles of road in 1897 and the miles not only of their own but of all roads in 1925 and he said,





"There is a percentage for you." Well, what of it? The country had developed; they had sold their land and settled it. They were benefiting in great measure not only in the hauling of the grain but also in the hauling back to these western provinces over the east-west route of manufactured goods from the factories of the east which were not being produced in the west, and which were being purchased with the wealth that was produced by the grain. So that in every sense they benefited from it.

Then I want to deal with 1918 when the war was on. There was a suspension by Order in Council under the War Measures Act, and then in 1919 there was an amendment to the Railway Act which continued for three years, and in 1922 there was another amendment to the Railway Act. That is the matter which finally found itself before the Board of Railway Commissioners in the year 1924. In the year 1924 the C.P.R. asserted the position they now assert, that they were only entitled to take grain from those points that were in existence in 1897.

THE CHAIRMAN: Do you not mean "obliged"?

MR. MACPHERSON: I mean they were only obliged. The farmer was only entitled to receive that rate who was shipping from those points. That claim was raised and they raised it successfully before the Board of Transport Commissioners. They raised it successfully in this sense. They suggest in argument that their will in the Supreme Court decision prevailed. The will of the company did not prevail as they urged it and as they succeeded before the Board of Transport Commissioners. It succeeded to this extent that they were obliged only to haul grain from the points that had been established in 1897, but before the Board of Transport Commissioners as



before the Supreme Court they asserted with all the emphasis they could that as a result of the amendment the Railway Act in 1922 they were freed completely from any responsibility or any obligation under the Crow's Nest Act, and consequently that it did not apply and that the Board of Transport Commissioners was in full and complete control of all rates on grain and flour, the same as they were of other commodities.

THE CHAIRMAN: What was the amendment of 1922?

MR. MacPHERSON: I will read you the amendment, my lord. In 1922 the Act was amended, and this subsection was passed which reads very much like subsection 5 of the Act of today. It reads:

"Subsection five of section three hundred and twenty-five of the Railway Act, 1919, shall, notwithstanding the proviso thereof, remain in effect until the sixth day of July, 1923, and may be continued in force for a further period of one year by order of the Governor in Council published in the Canada Gazette; Provided that, notwithstanding anything herein or in said subsection five contained, rates on grain and flour shall, on and from the sixth day of July, 1922, be governed by the provisions of the agreement made pursuant to chapter five of the statutes of Canada, 1897."



Now, the Board of Transport, with Commissioner Boyce writing the principal judgment of the Board, held in favour of the Company. Chief Commissioner McKeown wrote a judgment but it was a shorter judgment, but McKeown concurred really with Commissioner Boyce.

THE CHAIRMAN: Now what case is that?

MR. MacPHERSON: I am quoting, Mr. Chairman, from 29 Canadian Railway Cases at page 238.

THE CHAIRMAN: What is the name of that?

MR. MacPHERSON: Re Crow's Nest Pass Rates, and this is the decision of the Board, and Commissioner Boyce found in favour of the Company.

"I would find as facts upon the evidence:

(1) That the C.P.R. rates, as contracted for by the Agreement of 1897, while then fair and reasonable under then traffic conditions, are not adequate to present conditions of traffic and do not furnish an adequate return for the service concerned, and are not fair and reasonable, representing as they do but 35% to 60% of rates found adequate under present traffic conditions.

(2) That the continuance of any of the contract rates compel unjust and unfair reductions by other railways, not parties to the contract, in competitive territory, and causes unjustifiable loss to those companies, which they ought not be called upon to bear.

(3) That the rates in force July 6, 1924, were just and reasonable rates as to





all companies, were equitable, uniform and undiscriminatory in their effect, and had been permitted by the Board after full and exhaustive examination."

(those were the rates that had been filed)

(4) That rates represented by tariffs in question, effective July 7, 1924, are unequal, unjust, unfair, not uniform, and subversive of stable rate structure, and cause widespread and far-reaching dislocation and disruption of such rate structure, and are not based upon any sound principle applicable to present traffic conditions.

(5) That the Canadian National Railways are entitled to the just and reasonable rates found and permitted under the judgments and orders of this Board referred to.....

I am of the opinion:- (a) That the Crow's Nest Pass Subsidy Act was not, and is not a 'Special Act' within the meaning and intent of the Railway Acts of 1888 or 1903 or afterwards, and the jurisdiction and powers of the Board upon it conferred by its constitution and continued in subsequent Acts, are not limited, restricted, qualified or affected by anything contained in that Subsidy Act or in the Agreement of September 6, 1897."

THE CHAIRMAN: That finding was reversed?

MR. MacPHERSON: That finding was reversed.

Now, I may point out, Mr. Chairman, that to that judgment



there were two dissenting judgments. There was the dissenting judgment first of Dr. McLean,, that was referred to deservedly this morning by Mr. Spence. Dr. McLean dissented and held that the Crow's Nest Act was a Special Act, and there is an interesting part of his judgment at page 291 where he is dealing with the word "governed", the same word as in Section (5), the proviso to (5) as we have it here. He says:-

"The significance common to all these definitions -- "

(after he had considered the Funk & Wagnall's Dictionary definition of "govern")

" -- is that of control or limitation; and I am of the opinion that the construction of the legislation of 1922 must be approached from this standpoint. The rates, then, to be charged on grain and flour as dealt with under the Agreement on and after July 6, 1922, are to be controlled or limited by the rate provisions of the Agreement.

The legislation of 1922, as I read it, provides for controlling or maximum rates on grain and flour within the limits and conditions of the Agreement, and for these rates one is referred to the Agreement."

Then he goes on and deals with it. Now, the matter came up before the Supreme Court and the Chairman read this morning from it. I am quoting now from 30 Canadian Railway Cases at page 32, and in the submission of the Canadian Pacific they cite a portion of this judgment.

THE CHAIRMAN: What is the title of that case?



MR. MacPHERSON: Re Crow's Nest Pass Rates, and I am quoting now from page 46 because I think it indicates in proper perspective what the Chief Justice of Canada felt was the situation at that time. He reverses the decision of the Board below and he says:-

"In holding the statutory maximum rates fixed by sections (d) and (e) of the Crow's Nest Pass Agreement to be binding on the Board of Railway Commissioners we do not, as the Chief Commissioner apprehended, 29 C.R.C. 282 (1924) 4 D.L.R., at page 696, view the Agreement as 'forever disabling the parties thereto from reconsidering their situation... or readjusting their relations.'"

And then this is the important part from the Chief Justice. My friends talked about pressure groups.---

THE CHAIRMAN: About what?

MR. MACPHERSON: About pressure groups, about clamour, and when they talk about what can be political pressure and that sort of thing, this is what the Chief Justice says, removed from that sort of thing altogether. He says:

"On the contrary Parliament, which was in reality one of the contracting parties stipulating on the terms on which it would grant the subsidy may tomorrow reconsider and readjust those terms and relieve the other contracting party from the obligations it incurred; and it is not to be supposed that parliament would hesitate to exercise its powers for the correction or amendment of legislation which is found to operate





prejudicially to the public interest.  
But Parliament alone can do this. Having made the obligations statutory, it must change or amend them by statute."

Parliament alone can do this, and, as the Chief Justice points out, the public interest is the first consideration.

THE CHAIRMAN: Of course it is there anyhow, but he didn't talk about fairness to the other party to the agreement.

MR. MACPHERSON: No, but I am coming to show what was done. It then reached the high court of Parliament. Here was the situation that has been described by them as chaotic, and it reached Parliament and they had a fair deal, they had an agreement which was not a hard agreement (as they admit) in 1897. I am submitting that the deal they got from Parliament in sub-sections (5) and (6) was a fair deal from that court as well. Now, this is what Parliament said to it. They said: "You will be bound in the national interest to transport grain in accordance with section (11) of your agreement. You will be bound to do that and you are obligated to do that in the future as you have since 1897; but as a quid pro quo we are going to relieve you from the necessity of making these deductions in respect of rates west"and on these thirteen different items, the relief which the resident of the prairies had, he no longer had.



Not only did Parliament do that, but it said, "So that there can be no discrimination as against you in favour of anyone else, your competitors are going to have to do the same thing that you do. You will be on an even keel with them, and we will see that that is done, and it will be done by legislation." So I am submitting to the Commission that when they went to Parliament the result was that, while there was continued to the people of the west the right to have their grain transmitted at this rate, there was taken from them the other part of the agreement, and in that respect our friends of the railway benefit.

Yesterday I think Mr. Sinclair, when he was asked by the Chairman as to the increase in volume, indicated, at page 19759-A, that there likely was an increase in agricultural implements -- likely an increase in agricultural implements.

THE CHAIRMAN: In the volume?

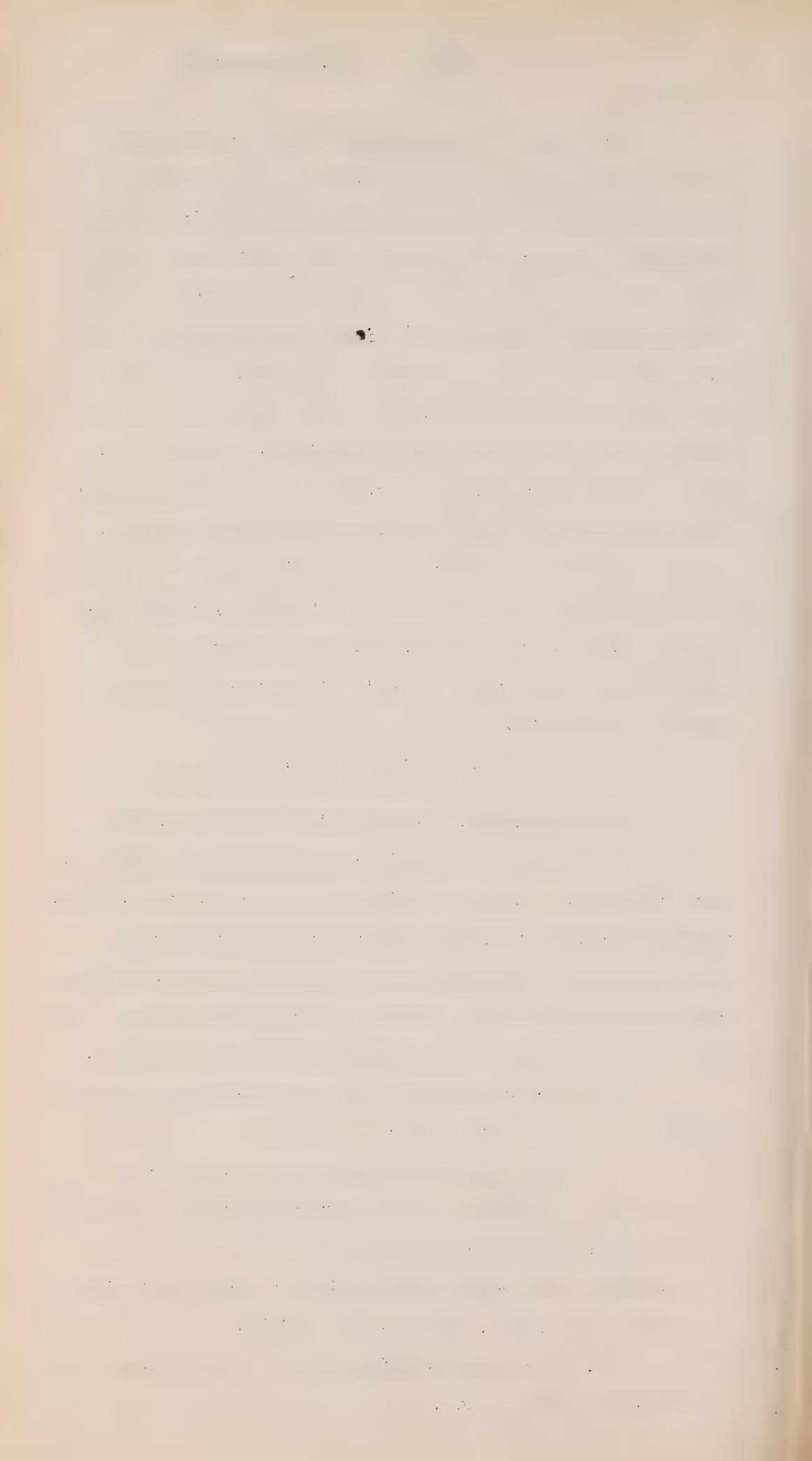
MR MACPHERSON: In the volume, yes, my lord.

The increase in agricultural implements must have been tremendous. As to the size of the implements, in 1897 the implements that would be going in would be largely mowers and plows and rakes and that sort of thing, whereas today there is the heavy combine, there is the tractor, and there is all that sort of thing that goes as implements.

Then Mr. Jefferson, when I cross-examined him, in volume 77 at page 15610, said:

"Q. So, excepting horse shoes and coal oil, perhaps, I suggest to you it would probably be fair to say that the other items in here which were moving westward and provided for would have increased, from 1898 until today, about fourteen fold?

"A. I do not know whether the increase would be fourteen fold or not.



"Q. But it would be a great many times what it was in 1898?

A. Yes, sir."

That is Mr. Jefferson's evidence at page 15610.

THE CHAIRMAN: Have we been shown anywhere what the difference in the freight rates is?

MR MACPHERSON: I beg your pardon?

THE CHAIRMAN: Have we been shown what the difference is in the freight rates as between the two times?

MR MACPHERSON: I do not think we have; I do not think so, my lord. I do not think that has been put in -- or the difference in revenue, neither I do not think has been put in. I think Mr. Jefferson was looking that up.

MR SINCLAIR: We had not been asked for that.

MR FRAWLEY: Perhaps I got the wrong impression. I thought from something you said, Mr. Chairman, that Mr. Sinclair had responded that he would see if he could find the 1897 rate on farm machinery for you.

MR SINCLAIR: Nobody asked me that.

THE CHAIRMAN: I think I mentioned it myself, some time ago -- I do not know to whom now -- but it must be easy to establish rates on these different times.

MR SINCLAIR: Well, I would not say easy.

THE CHAIRMAN: Well, why not? -- the rates on farm implements.

MR SINCLAIR: The difficulty is finding these old tariffs, my lord. It is a tremendous job sometimes to find these old tariffs. For instance, in helping my friend Mr. Frawley find some old tariffs, we had to wire all over the United States, and had over a thousand tariffs gone through to find out the information he asked for.

THE CHAIRMAN: Well, would it be necessary to go back to the tariffs you had in 1897? You could bring them





for a great deal later than that, couldn't you?

MR SINCLAIR: Yes.

THE CHAIRMAN: And they would be the same, you see.

MR SINCLAIR: If your lordship wants the information and the Commission would like to get it---

THE CHAIRMAN: If it is not too expensive.

MR SINCLAIR: Oh, no; I do not think we will have too much difficulty in this case.

THE CHAIRMAN: I think it might rather have been a part of the case of the provinces to show the benefits which probably accrued to the railways, you see.

MR MACPHERSON: I will try to get that.

THE CHAIRMAN: From the new rates which they were allowed to make effective.

MR MACPHERSON: I will try to get that, my lord.

MR SINCLAIR: Anything that we can do to have all the facts available we will do.

THE CHAIRMAN: Thank you.

MR MACPHERSON: Now, if the Commission will refer to Exhibit 159, which is filed by the railway, it shows the grain crop in the prairie provinces in the years 1898, 1946, 1947 and 1948, and it shows the production in each of the three provinces. Now, here is the interesting fact, that the Province of Manitoba in 1898 produced about 25 million bushels of wheat, which actually is about half the production of wheat in Manitoba today; but in the Northwest Territory, what is now Saskatchewan and Alberta, the production of wheat was only 5,542,000 bushels, so that when you take today according to this Exhibit 139 there was an increase from 5.5 million to 308 million, or an increase in those two provinces 56-fold in the production of wheat; and if you take, for instance, 1942, which was a large crop year in the Province of Saskatchewan, when we had



335 million bushels of wheat, we produced in that one year 61 times the amount of grain that was produced in both provinces in 1898, when the agreement was entered into.

I am submitting to the Commission that the railway has benefited from that production, with east-west traffic. That wheat has been sold, and the wealth that has come from it has been used to purchase goods and products from Eastern Canada, that have come from Eastern Canada over the railway.

THE CHAIRMAN: Yes, in that way, but so far as the great increase in volume is concerned, if it is carried at a loss, the greater the volume the greater the loss.

MR MACPHERSON: Well, we have never admitted that they are carrying it today at a loss.

THE CHAIRMAN: No, but that is the case of the railway.

MR MACPHERSON: It is not before the Commission at the moment, but the admissions of the railway certainly are to the effect that it was not being carried at a loss, that the rates were lucrative, lucrative notwithstanding the fact that they were about half what the rates were in the United States.

THE CHAIRMAN: Now, just to sum up this part of your argument, when these alterations did take place in the contract by Act of Parliament, the position of both parties is of some interest to us, of some concern. Now, the railways oppose the alteration.

MR MACPHERSON: Well, I think so, my lord; I do not know. There is nothing to indicate---

THE CHAIRMAN: Doesn't that flow from these cases, for instance?

MR MACPHERSON: Well, no. Parliament was sitting when the decision was given by Chief Justice Anglin in 1925,



and in that very year---

THE CHAIRMAN: Pardon me a moment. Mr. Sinclair, I suppose the railway did have an attitude at that time, when this amending legislation was put through altering the provisions of the 1897 agreement.

MR SINCLAIR: Yes.

THE CHAIRMAN: What attitude does your company take?

MR SINCLAIR: Well, from my own knowledge I do not know that. All I can say is---

THE CHAIRMAN: What I mean is this: We will suppose an agreement, and then we will suppose later on an alteration in the terms of that agreement. It is pertinent to know whether both parties agreed to the alteration.

MR SINCLAIR: We did not consent to any amendment of the agreement.

THE CHAIRMAN: Did you object?

MR SINCLAIR: Certainly, my lord. We filed tariffs in accordance with the Crow's Nest Pass agreement, and we were prepared to carry those tariffs out in accordance with the true interpretation of that agreement.

THE CHAIRMAN: When, when?

MR SINCLAIR: In 1924-25; but Parliament came along and said No.

MR COVERT: Mr. Sinclair, I gathered that the Chairman was asking what position the C.P.R. took with Parliament when they changed the terms of the agreement.

THE CHAIRMAN: I think Mr. Sinclair is leading to that.

MR SINCLAIR: Yes.

THE CHAIRMAN: Parliament passed this legislation. Now, during that time, the time that you filed these rates and Parliament legislated about them, did your company take





any action to have Parliament act otherwise?

MR SINCLAIR: I do not know what action you have in mind, my lord. Do you mean, bring a legal action against the Government for breach of contract?

THE CHAIRMAN: Could it be set up in any way that your company consented to these alterations?

MR SINCLAIR: Not to my knowledge, my lord. We did not sue the Government.

THE CHAIRMAN: Because, as is pointed out, the alterations were not all against you, you see; some were in your favour, such as the release from the obligation concerning westbound traffic; others apparently were against you. You were made to apply these rates compulsorily to lines that did not exist in 1897, and so on.

MR SINCLAIR: That is a point that I have marked for my reply, my lord, and I have got some material here I was looking for, and there are a number of other things I would like to speak about.

MR MACPHERSON: In any event, my lord, I suggest this, that, after all, this is <sup>a</sup> democratic country, and Governments would be in consultation with the Canadian Pacific Railway before the legislation was passed.

MR SINCLAIR: I beg your pardon?

MR MACPHERSON: The Canadian Pacific would be in consultation with the Government.

MR SINCLAIR: Unless my friend has some evidence to support that---

MR MACPHERSON: No, I have not.

MR SINCLAIR: There is a factual statement. My understanding is that we did oppose it, but I did not want to make a statement till I could put my finger on something to support it.

MR MACPHERSON: I have simply said that this is a



democratic country, and I simply say that governments as a practice do consult in such circumstances. The whole set-up of the manner in which we are to make our laws is such that legislation has to go through first, second and third reading. Things cannot go through at once. Representations are made. If legislation is introduced and there is opposition to it, representations are invariably made, and the opportunity is given. Governments never refuse to hear representations made in that connection.

THE CHAIRMAN: I know that; but you cannot assume from that that the company agreed to what was done.

MR MACPHERSON: No, my lord, I cannot go any further, only to say this -- and I think this is confirmatory of the position that I take -- that the company was not too much disappointed about the whole business; after 1925 they proceeded in Saskatchewan and Alberta particularly with a branch line programme such as they had not had before -- 1925 and 1926.

I have before me a copy of a letter which was written by Mr. Beatty, a statement by Mr. Beatty to the Senate Committee on the C.N.-C.P. Act on the 17th of November, 1932. He says:

"The report makes mention of branch line construction and expenditures on hotels."

These were the difficult times in 1932.

"In the policy of the company in these matters, competitive consideration had only a minor part."

That is, competition of the Canadian National.

"The chief factors were the interruption of the railway construction during the war, and the rapid extension of settlement, particularly in the Western Provinces, which followed it. In Saskatchewan and Alberta alone the area under wheat increased from 6,993,000 acres in 1914



to 21,490,000 acres in 1930. Industrial and commercial enterprises also entered new fields, and for all these, railway service was necessary. These settlements and industries owed their existence in a very large measure to the colonization and development work of the company, and it was but natural that it should look forward to a share of the traffic which they might yield. As has been said, the orderly progress of its programme was affected by the action of the rival system, but the future of the company could not have been protected if it had refrained from following the march of settlement. The traffic returns of the new lines up to 1930 fully justified their construction, and the falling returns of subsequent years have been no more characteristic of the new lines than of other parts of the railway."

My point is that if there had been this terrible disappointment on the part of the company at this action of the Government of Canada and the Parliament of Canada in 1925, then there would not have been the branch line construction to the extent there was in these areas that were particularly affected by these two subsections; but they were carried on, there was no cessation of branch line activity. Instead, it was accelerated, and that was the position from 1925 to 1926, 1927, 1928, 1929 and 1930, and it stopped then.

Now, my lord, my friend referred two or three times to the Farmers' Creditors Arrangement Act. There is a statute which was passed for a purpose that interfered with contracts as between individuals. It provided for the setting up of a new set of covenants between individuals, between mortgage companies and banks and lumber companies and machine companies and the farmer. That was done by





Parliament. So here you have the contractual parties, the farmers on the one hand, so to speak, and the company on the other, through the Government. The contract was amended by Parliament, but the contract is still regarded as existing between the parties.

THE CHAIRMAN: These relief contracts that you refer to were all altered for the benefit of the farmer, were they not, by a reduction in his debt to begin with?

MR MACPHERSON: Yes, they were. It was for the benefit of the farmer, but also for the benefit of the creditor.

(Page 19895 follows)



As Mr. Sinclair said during the course of this week, the Canadian Pacific Railways, in order to keep men on the land, which was the important thing, in order to encourage men to stay with the land, voluntarily reduced the obligations. I have forgotten how many millions of dollars he said that their own company had forgone in the matter of obligations from the farmers who were on their land, and the loan companies did the same thing. In very very many of these instances consent orders were made because their concern was that the land be farmed, and they had to share the loss with the farmers. Mr. Covert says that under that Act creditors were allowed to vote, which is quite right.

THE CHAIRMAN: To what?

MR. MacPHERSON: To vote, at a certain stage under that Act. The first stage was a meeting of creditors with the debtor and at that meeting the creditors had the right to vote, and they might refuse to accept the proposition of the farmer, and then there would be nothing settled at that stage. The farmer then could appeal to the board of review, and when the matter came before the board of review the board could impose on farmers and creditors alike a proposal which would be binding without the consent of either the farmers or the creditors. I am trying to hurry along as fast as I can because everybody wants to get through.

THE CHAIRMAN: What was the name of that Act?

MR. MacPHERSON: The Farmers' Creditors Arrangement Act, and it was passed in the year 1934. I have forgotten the chapter.

MR. COVERT: I think I might mention that it was about this same time that a companies' creditors arrangement act was passed. It is really a type of



bankruptcy legislation.

MR. MacPHERSON: That is right.

THE CHAIRMAN: Yes, I remember. The acts were justified as bankruptcy measures.

MR. MacPHERSON: On that basis. The matter was referred to the Supreme Court and an appeal was taken to the Privy Council, and it was on that basis.

THE CHAIRMAN: It was not a matter of provincial jurisdiction.

MR. MacPHERSON: Not a matter of provincial jurisdiction; that was the issue. I want to refer now to another aspect of this question. In the evidence, volume 97, page 18249, I asked Mr. Armstrong about the world's production of wheat and he said it was six billion bushels. Under the International Wheat Agreement, which is in evidence as exhibit 211, we see that <sup>the</sup> world wheat trade guarantee each year to the end of 1953 on the part of thirty-seven importing countries is 456,000 bushels. To that is to be added 100,000,000 bushels in respect of Germany and Japan who, in the past month, have been added to the list making a total of guaranteed imports of 556,000,000 until the end of the crop year 1953.

That means that the total world trade is less than 10 per cent of the world production of wheat, and of that world trade Canada under the international agreement, which is exhibit 211, will get 220,000,000 bushels, and it rises in the last year to 230,000,000 bushels, that is, 220,000,000 out of 556,000,000 and in the last year 230,000,000 out of 556,000,000. Canada, which produces a little more the 5 per cent of the world's total production of wheat, actually supplies almost half of the world demand. That is the position at the moment; that is the position we are in under this international





agreement.

The international agreement in itself indicates the measure to which buyers and sellers alike foresee a lowering of price for while the ceiling is maintained during the course of the agreement at \$1.80 the floor is dropped from \$1.50 to \$1.40 to \$1.30 to \$1.20 in succeeding years, so that in the last year of its life the floor is \$1.20.

The position for Canada is this. According to exhibit 179, which I caused to be filed, you will see the production in Canada and in the United States over a period of years. You will see there that the average production in the United States up to the beginning of the war was around 750,000,000 bushels, that her exports most years were a negligible percentage whereas in Canada it was a matter of life and death with us to export our grain. Now we find with inducements offered by the government of the United States to its farmers, and with providence smiling as well, they have produced as much as 1,360,000,000 bushels of wheat in one year, and in four consecutive years they have produced over 1,100,000,000 bushels of wheat. At the present time they have, according to the evidence, over 600,000,000 bushels of wheat as a surplus in the United States, and at the same time they have this they are bonusing the export of their wheat. They are encouraging the production of wheat in many ways and with Marshall aid and so on they are in a position to make sales in a way that this country cannot possibly do.

At this very time, according to exhibits I have filed, 212 and 213, reports from the American Department of Agriculture, the facts are given there as to what is being done by the American Department of Agriculture today



to encourage production of wheat, and as to what the wheat position is there. At the same time while that is going on their surplus is piling up, and the prospects for the current year for their winter wheat crop in the south are excellent, according to the last report which was filed as of the 15th of February. In the same way the conditions of crops in Europe, as reported in that same report which is authoritative and authentic, are excellent.

At this time, having gone through the conditions we went through in the 30's, a condition of glut, a condition of surplus, of not being able to dispose of our grain at any price, we find ourselves with the world wheat trade shrinking. We find ourselves with our great neighbour to the south having increasing surpluses. We find ourselves with much being<sup>done</sup>/to encourage development there. Only in the past week the Minister of Agriculture of Canada urged the farmers of western Canada to cut down their wheat acreage by three million acres this year.

At this time the Commission is being asked to recommend to parliament -- Mr. Sinclair says that he speaks to you as the agency of parliament -- that there be taken away from the farmer that cornerstone of security which he has felt he has always had. It is not a matter of psychology; it is not a matter of superstition; it is not a matter of that kind at all. It is a conviction that, in so far as he is concerned, in season and out of season the only way in which he possibly can carry on is by having this guarantee. Through the '30's he did not ask for a reduction in these grain rates, when he might have but he felt that the turn would come and he was prepared to take the bitter with the sweet.



I was intrigued this morning to have Mr. Spence say in his suggestions that in the '30's it was conceivable that the Board of Transport Commissioners, in order to help the farmers, might have reduced freight rates. According to Mr. Armstrong it would not have helped the farmer. It would have helped the buyer in Europe. So that somehow or other there must be some basic difference between them because if Mr. Armstrong is right then it would not be helping the farmer a bit to cut down freight rates, but Mr. Spence suggests that it might be seriously argued -- and I think Mr. Spence is right and I do not think Mr. Armstrong is right because I do not feel that the rate from the farm to Fort William which after all is what is in issue here is borne by anyone else than the farmer. In Mr. Armstrong's evidence, volume 96, page 18097, he painted in the most lurid way the conditions that obtained in western Canada during the '30's.

THE CHAIRMAN: Who?

MR. MacPHERSON: Mr. Armstrong. He said:

"Some of us in this room must have been on the prairies during the great drought and depression, and anyone who was on the prairies in those years and did not realize that the western Canadian farmer was suffering, why, he must have been blind. There were such people, blind people, but they could not see that the western farmer was suffering. There is a thing that we have to face; the western farmer went through this. Now, what are we going to do about it?"

Then Mr. Armstrong suggests that we have to deal with the marginal and sub-marginal farmers. I am not going to take time this afternoon, but when I pressed Mr.





Armstrong as to how many there were, as I did when he referred to the unnecessarily large number of marginal farmers, he finally answered that one would be too many. Mr. Armstrong carefully chooses his language. He is a student of semantics, and the words he used were "an unnecessarily large number of marginal farmers." Mr. Armstrong characterized this agreement as <sup>a</sup> clumsy, ineffective and inadequate subsidy. We do not agree with that at all. At a time when we are living side by side with the great American republic, with the money they have, with their production, with the bonuses they are paying, we say it would be disastrous not only to the world but also to the economic security of the west if this change were made.

I am not going to take much time to deal with the question of who pays the freight. I listened to Mr. Armstrong. In volume 97 at page 18304 Mr. Armstrong completely disposes of this theory himself. I put to him the question of the three farmers, one from Manitoba, one from Alberta and one from Saskatchewan, and he finally admitted that the price would have to be such as would take care of the farmer farthest away, and that was going to mean with higher freight rates the more money I would make as a farmer in Regina and the more money still Mr. Shepard would make as a farmer in Manitoba because he was closer to Fort William. At page 18304 I said:

"You are assuming that the Liverpool buyer will, without question, accept that increase which I have assumed?"

Mr. Armstrong's answer was:

"That is the basis of the assumption, of course; that is the basis of the argument. If he does that,



then we are leaving Mr. Frawley not hurt, and you are getting some manna from heaven and Mr. Shepard a little bit more."

That just does not work.

THE CHAIRMAN: On this question of who pays the freight rates, to look at in the broader light of general national policy, we have been told for many years that our wheat is produced in the middle of a continent, that it is a long railway haul and added to that a long ocean haul, to get to the same markets where other wheat can arrive with a shorter haul. Certainly there is a shorter railway haul in the other cases which is the most expensive part of the haul. In so far as the demand for that wheat is concerned, does that matter who pays the transportation.

MR. MacPHERSON: Perhaps not except --

THE CHAIRMAN: You see the transportation, whatever it is, is there. If the buyer in Europe has to pay it all, let us say from Regina to Liverpool, then the higher it is the less inclined he is to buy it, in so far as transportation costs enter into the price. Is that not so?



MR. MacPHERSON: Well, yes, but I think we get down to this: so far as the farmer is concerned, to him the price is the amount of cash which he gets in exchange.

THE CHAIRMAN: That is another feature. But what I am talking about is the consideration which, we are told, is to make the transportation of this Canadian wheat, grown where it is, as cheap as possible, and to get to these world markets where it competes with wheat which arrives there having paid less for transportation.

MR. MacPHERSON: That is right.

THE CHAIRMAN: And therefore the buyer has to consider if transportation is to be taken into account.

If I take this wheat from Regina, I have to pay so much more for the transporting of it here than if I take wheat from Hungary, for example. So, from the point of view of making Canadian wheat more saleable in competition with other wheats which are offered for sale, it does not matter to me where the transportation is paid because it is there in the price.

MR. MacPHERSON: I think that is right.

THE CHAIRMAN: When we are told that the buyer pays it all, instead of that being the argument in the way it was intended, I think it works the other way.

MR. MacPHERSON: Yes, I think it works quite the other way because of the end result.

I remember the situation back during the inquiry, The Grain Inquiry. There was a situation where you just could not sell your grain until a situation developed when there was a scarcity in Europe and there were sales. But if we put our price up, if, as Mr. Armstrong said, they





doubled the freight rates to 12¢, the amount of increase in the price of our wheat at Fort William, if there was an open market, then our wheat just would not sell because American and Australian and Argentinian and Hungarian and French wheat would have a sale, and our wheat just would not sell.

After all, what we must consider is the moving of the wheat from the farm to the ultimate consumer. And in the last analysis, to argue that the buyer pays all - if the buyer does pay all - then, in a time of plenty, if our freight rates are too high, then he just won't buy our wheat.

THE CHAIRMAN: In dealing with the contract - you seem to have dropped the contract for the moment - you did not deal with the alterations made in it by the extension of those rates westward.

MR. MacPHERSON: I shall deal with them.

THE CHAIRMAN: Perhaps somebody else from the provinces will do that.

MR. MacPHERSON: No, I do not know that anybody is going to do so. It was a natural development of the country in which the Canadian Pacific was a very large part, that the ports of Vancouver and Victoria should be developed as well as the port of Prince Rupert, to a degree by the Canadian National.

Now, with the developemnt of theseports and with the building of the Panama Canal there went hand in hand the fact that these ports became shipping ports and that elevators were built there, I mean terminal elevators were built there, and grain was shipped from there; and it was purely, so far as the Canadian Pacific



was concerned that they put a rate on to Vancouver, a voluntary rate, which was the same type of rate as the Crow's Nest, and that rate was continued.

Then, when the decision was given by the Supreme Court in 1925 - first of all, when the decision was given by the Board of Transport, that was up in the air, or it might have been up in the air, but Parliament then acted and passed legislation putting in sub-section (6), and made it apply - sub-section (5) as well - to all other lines as well as the Canadian Pacific lines.

THE CHAIRMAN: You think that provision in the act meant lines going westward as well as eastward?

MR. MacPHERSON: I think that is why sub-section (6) was put in - not sub-section (5) but sub-section (6). I think it was put in to take care of the situation of lines going west. And while there was no provision otherwise, the Board of Transport then was in no position than to do this, and to pass the order which made the same rates apply to exports to Vancouver as to Fort William.

THE CHAIRMAN: Do you consider there was anything unfair about it?

MR. MacPHERSON: I do not think there was any objection at that time.

THE CHAIRMAN: We heard from Mr. Sinclair yesterday. He made something out of it.

MR. MacPHERSON: Well, I would say this: I cannot prove it <sup>at</sup> all, my lord, but I think the Canadian Pacific was just as concerned as were the citizens of Vancouver to develop the port of Vancouver; and I think that the development of that port as a grain port was supported by the Canadian Pacific just as much as it was



supported by anyone who was interested in it, in the City of Vancouver. And I do not think that the record will show that there was other than the most complete co-operation between the City of Vancouver, the City of Victoria and the Canadian Pacific. Up to that time there was no objection whatever to putting these rates in until the whole question was raised, naturally, in 1924, and whilst before the Board in 1924.

THE CHAIRMAN: When was the extension made westward? It was about that time, was it not?

MR. MacPHERSON: The order was made. It was in the twenties that I think the first terminal elevator was built at the coast.

THE CHAIRMAN: I know. But there was one there in 1923?

MR. MacPHERSON: Yes, that was about the first, and at the time that was built, it was before 1924, there was a rate to the coast which was as good as the rate - as I understand it - the rate to Fort William.

THE CHAIRMAN: You refer now to the voluntary rate?

MR. MacPHERSON: The voluntary rate which was put into effect by the Company itself. I shall not be very much longer, my lord.

THE CHAIRMAN: Yes. You were about to finish?

MR. MacPHERSON: I shall not be very much longer. But there is one matter I should like to refer to, and that is at page 19787. Yesterday Mr. Sinclair referred to the 12 cent, the increase to Regina, that it only being 6% of \$2.00. But by the same token, it would be 10% of the \$1.20, if the floor reached 1953;





and it would be 30%, yes more than 30% of the low rate of 38¢ which was back in 1932.

And then, doing the same figuring, the Canadian Pacific collects about \$30 million a year from the Crow's Nest rates. And if these rates are doubled, it will collect twice that amount. And if the Canadian National does likewise, and it will, the increased bill that will be paid out of Western Canada will be a very heavy one.

If it goes as high as \$60 million, as it might, that would be the equivalent in interest at 5% to a very great mortgage, in a sense, as against the farm lands of Western Canada.

I am only trying to translate into figures. Mr. Sinclair says this increase - I am simply indicating at a time when, in my own province, the Province of Saskatchewan, after ten years of comparative prosperity in that province, nevertheless we have lost 100,000 people.

At a time like this, anything that was done - it is not because of the psychology; it is not because of clamour, but it is because of a feeling of a loss of economic security. And naturally the man who would be the most damaged would be the sub-marginal land operator - and there are still some there, as there must be. And if he is forced off the land, then he provides a <sup>very</sup> real problem, in a sociological way, for Governments Municipal, Provincial, and Dominion in the country.

Now I was trying to indicate how simple it looks: 6% of \$2.00. But no one in the west feels that \$2.00 wheat is going to last,. People in the west are resigned, under this International Agreement to a floor of \$1.20 by 1953. And if that is so, then the 12¢ becomes, at once,



10%.

I do not think I want to take any more time, Mr. Chairman, because there are others who want to follow me, such as Mr. Frawley and Mr. Shepard. I know that everybody wants to finish up today. I would like to say this, however, and I think, probably, I can best close, by quoting from - -

THE CHAIRMAN: Perhaps as you are about to close I should ask you this question because it is of some importance.

The Canadian Pacific come to us and they say: that if - and they are satisfied that they can prove that these rates have become non-compensatory - we, here, have not had the time or the facilities to go into contentious accounting to check the cost of any particular haul in the country. I think everybody understands that.

But if, eventually, the opportunity should present itself, and it should appear that these rates, in fact, are not now compensatory, and that the railway rates - both of them - have to carry the traffic at a loss, I suppose then you would say that something has to be done about it. Isn't that so?

MR. MacPHERSON: That is right.

THE CHAIRMAN: Now, the railways say that in such a case what ought to be done is: that the rates ought to be increased, and if that is found to be a hardship on the shipper-producer in the west, then put in a subsidy; that he should be the recipient of that subsidy and not the railway.

Have you any suggestion to offer?

MR. MacPHERSON: Yes, my lord. The suggestion I have



to make on behalf of Saskatchewan is this: that if there is any subsidy in that connection to be paid, it should be paid to the railway.

THE CHAIRMAN: If it did turn out that these rates were non-compensatory, then you admit that something would have to be done about it?

MR. MacPHERSON: That is right.

THE CHAIRMAN: And what do you think that something should be?

MR. MacPHERSON: I say that the subsidy should be paid out of <sup>the</sup> national exchequer to the railway.

THE CHAIRMAN: And you are saying that on behalf of the Government of Saskatchewan?

MR. MacPHERSON: Yes, that is what I am authorized to say.

THE CHAIRMAN: Very well, you may proceed.

MR. MacPHERSON: I would like to refer for a minute to Mr. Spence's "just and reasonable rates" of this morning.

First of all, the Canadian Pacific want no amendment to the Railway Act empowering the Board to consider any additional economic outlooks. I think that is what Mr. Steer said last night.

Now, the Board has declared, as your lordship has read, that it is not empowered under the Act as it is ~~to~~ consider economic outlooks.

Now, the farmer feels, and he is convinced that the Board of Transport cannot fix just and reasonable rates on grain because it is precluded by law, according to the Board's jurisprudence, from taking that wide view which he regards as essential.





The grain farmer of the west feels that the only court that can determine his transportation rate is one that can take the wide economic view, a view of national policy. But that is something the Board of Transport refuses to take. And our Canadian Pacific friends say they will not disturb the status quo.

And so far as the farmer is concerned, I further feel this: - as I think Mr. Wesson said the other day, or perhaps it was Mr. Brownlee, it was one or the other, and I just forget which one - I think the position of the farmer is this: that if, with the Crow's Nest legislation in the position it is with sub-sections (5) and (6) and Section 325, if that is deleted, as the Canadian Pacific say they want it deleted, then there would be an attempt to satisfy him by a subsidy, as the Canadian Pacific suggests, and then he would feel that there was bad faith on the part, first, of the Canadian Pacific and of the Government.

They were parties to the agreement in the first place, and Parliament is the high Court, and Parliament should continue to deal with it. And if a subsidy is to be paid, it should not be paid to him, he thinks, but it should be paid to the railway.

But the railway says: "We do not want a subsidy." They regard it as a corrupting influence and they do not want it. They won't take it. But if your rate fixing principle is the same, why pass on this evil influence to 250,000 individuals? That is what they say. They would subsidize the farmer, but they would not be subsidized themselves.

I am suggesting that what the view of the Province of



Saskatchewan is: that if something - we do not admit - but if the rates are non-compensatory, and if something is to be paid to the railway to balance off for the railway, then that should be paid out of the exchequer of Canada to the railway, and there should be no effort made, such as was suggested by the railway, to subsidize the farmer. That is all.

THE CHAIRMAN: You are through now?

MR. MACPHERSON: Yes.

THE CHAIRMAN: I shall not ask you this expecting you to answer it today, because we are dealing now with the Crow's Nest rates. But throughout this inquiry something would be said every once in a while about the powers of the Board, whether they should be extended or even if they should be restricted, or, as they are now, is the present situation satisfactory?

We heard counsel for the Canadian Pacific this morning say they were satisfied to leave the powers of the Board as they are now in the Statute.

I am not expecting you to answer the question now, because the question is more general than its application to this particular class of rates. But when we do hear final argument, we do want to know from all concerned, what they have to tell us about the Board itself, and this situation, and particularly the powers which it now professes, which perhaps ought to be extended or otherwise.

I think we shall take a few minutes for recess now.

MR. MACPHERSON: Thank you, my lord. I am sorry I took so much time, but I had to answer my friends.

RECESS

(Page 19925 follows)



---On resuming.

MR. FRAWLEY: My lord, before commencing I would like to refer to something that transpired during Mr. MacPherson's argument with regard to the rates on agricultural machinery under the Crow's Nest Agreement, and now. I was going to say that at page 19726 from the cross-examination of Mr. Marler the question of the relation between the rates on farm machinery from Toronto to Calgary under the Crow's Nest Agreement and the present rates came up. At that page you said to Mr. Spence, my lord:

"THE CHAIRMAN: Mr. Spence, on page 11 Mr. Marler gave us certain rates on farm implements. Are you questioning the figures he gives us there? He showed us an increase from \$1.25 to \$2.30. Are those figures not right?

MR. SPENCE: I suggest that they are not right my lord, but I would like to check them."

Mr. Spence has been good enough to tell me just now that these figures are correct.

THE CHAIRMAN: These figures then show the difference between 1897 and now, is it?

MR. FRAWLEY: 1897 and now. In the report of the Farm Implements Prices ---

MR. SPENCE: If Mr. Frawley will pardon me a moment, not "and now"; between 1897 and 1937.

MR. FRAWLEY: I was going to deal with that. That is right, you see, because what Mr. Marler --





I am sorry, I have not got Mr. Marler's brief here, but Mr. Marler must have today's price, because I see \$2.30, and as I calculate the 1937 price of  $\$1.66\frac{1}{2}$ , which Mr. Spence tells me is correct, if you roughly add 21 and then 16 you will get today's price, and that will run out to about \$2.32. Now, without trying to be exact about it, it would seem as if today's price is \$2.30, \$2.32, something of that sort. I imagine that Mr. Jefferson could give us the exact figure just in a minute, but whatever it is it is roughly figures of this order. That is the point Mr. Marler was making when he was calling attention to the very considerable difference in the Crow's Nest Pass farm machinery rates and what the farmers of Alberta have to pay today.

THE CHAIRMAN: You are now about to address us for the Government of Alberta?

MR. FRAWLEY: Yes, I am addressing you for the Government of the Province of Alberta, my lord.

THE CHAIRMAN: All right.

MR. FRAWLEY: And I would expect to be quite short, my lord, not only because we are getting to the end of our time but because Mr. MacPherson has addressed you quite extensively, and I will content myself with only some phases of the matter, leaving other phases of it quite untouched in my argument.

Now, I put it to the Commission, my lord, that the basic question at issue here is: Should the grain rates be treated in precisely the same manner as all other rates. That, I take it, is the core of the Canadian Pacific position, and I have two arguments to address to the Commission. Only Parliament can effectively take cognizance of the factors which make



for a just and reasonable rate on grain. Then I want to say something about the grain rates not obviously being unreasonably low today merely because they are rates which were in effect in 1897. Then I will say just a few words about the proposition that the Canadian Pacific has a forum; and a word or two about Mr. Sinclair's question that he put to all the witnesses, namely, the harm that could come or could not come to the farmer if just and reasonable rates (as the Canadian Pacific described them) were fixed by the Board and this subsidy given directly to the farmer. Those are the matters I will deal with and rather briefly.

Now, I say, my lord, that the grain rates were reserved to Parliament because of the basic considerations which apply to the growing and marketing of grain in Western Canada; considerations which only Parliament, surveying the national interest, could and can now adequately assess. I refer to such matters as the foreign markets, the regional and national welfare implications, the historic aspect of the policy, price instability and production instability, and the absence of competitive forms of transport.

Now, I put it to the Commission that the Board could not take such factors into consideration, but I want to call to the Commission's attention immediately that the Canadian Pacific does not want the Board to take these factors into consideration. That is made very clear in the record at page 19285 of Volume 104, where the following exchange took place between your lordship and Mr. Sinclair:

"THE CHAIRMAN: That is, the Board then would not have any of the discretion which of



course Parliament has, to consider national and economic matters that might be necessary to consider.

MR. SINCLAIR: In fixing the rate?

THE CHAIRMAN: Yes.

MR. SINCLAIR: Oh, they would not give reflection to that.

THE CHAIRMAN: That is what I say. The rates at present are controlled by Parliament, and you would take them down to the Board and the Board would have to consider these rates just on the cost basis.

MR. SINCLAIR: Yes."

THE CHAIRMAN: I am not sure of "just on the cost basis". That is from the record you are reading?

MR. FRAWLEY: I am reading from the record.

THE CHAIRMAN: Could you read that sentence again?

MR FRAWLEY : Yes. Your lordship said:

"That is what I say. The rates at present are controlled by Parliament, and you would take them down to the Board and the Board would have to consider these rates just on the cost basis."

THE CHAIRMAN: "Just on the cost basis"?

MR. FRAWLEY: Just on the cost basis, because in the earlier page, my lord, 19284, you said at the bottom of the page, or Mr. Sinclair read what was in the Canadian Pacific brief, paragraph 189, the paragraph that has been read so often:





"Before fixing the rates on grain and grain products in Western Canada, Canadian Pacific would expect a most thorough and detailed study by the Board. In developing the cost of handling grain in Western Canada, Canadian Pacific has voluminous working papers. These can be made available to the Commission if desired, and of course, would be available to the Board on any study that they may undertake.

THE CHAIRMAN: Does that not have in mind, though, a study by the Board as to costs only?

MR. SINCLAIR: Yes, that is right. To fix the just and reasonable level of grain rates the company is taking the position that the Board would make a study into the cost of moving grain, and that --

THE CHAIRMAN: In order to provide you with what you call a compensatory rate.

MR. SINCLAIR: Yes, and to give us something over that.

THE CHAIRMAN: That is, the Board then would not have any of the discretion which of course Parliament has . . ."

This is what I read before. Now then, going on you said:

". . . and you would take them down to the Board and the Board would have to consider these rates just on the cost basis.

MR. SINCLAIR: Yes. Of course, my lord, it would go on this basis, that the railway would make an application to the Board to fix a rate on grain, and in support of it they would bring



forth some evidence as to cost, because the rate that they would propose would be a rate that would cover their cost of movement plus something to other expenses. Now, exactly how much more than the cost they would ask for would be in exercise of their judgment as to what deterrent there would be on the free movement of grain by fixing a rate at a certain level.

THE CHAIRMAN: I see you put one limit on yourselves there, where you say that Canadian Pacific would not expect nor would they ask for rates as high as obtain in Western United States.

MR. SINCLAIR: Oh, no.

THE CHAIRMAN: For the same or similar distances.

MR. SINCLAIR: No.

THE CHAIRMAN: You put that limit on yourselves, well, that is your machinery, anyhow.

MR. SINCLAIR: But the point I make to Mr. Frawley is ---

THE CHAIRMAN: I understand; that is part and parcel of your case. You say, now, let the Board determine these rates on this what you might call technical basis, and then if in addition to that national policy requires that some relief be given, that would be given to the producers and not to the railways. That is your whole policy.

MR. SINCLAIR: Yes."



I have read it all. I had not intended to read so much at the beginning, but I am glad I did. That now is pretty well a complete statement of what passed between Mr. Sinclair and your lordship on that day.

THE CHAIRMAN: Pardon me, Mr. Frawley, Mr. Sinclair doesn't seem to agree.

MR. SINCLAIR: Well, I say that you have to continue and read how I explained how the grain moves freely and what considerations would govern that, and I did that in the answer immediately following.

MR. FRAWLEY: Well, I will go on.

MR. SINCLAIR: I knew you would.

MR. FRAWLEY: Well, I don't know how much farther I should go.

MR. SINCLAIR: The record is there.

MR. FRAWLEY: "COMMISSIONER INNIS: And Mr. Evans made some statement to the effect that he was opposed to any flexibility of rates, because one could think of a situation of a large crop with high prices or a situation of a low crop and low prices, in which presumably the burden of the rates would vary greatly; but you are not willing to recognize that sort of situation.

MR. SINCLAIR: Well, if the Board took into account the need to move the crop freely -- and I think it must take that into account -- and the rate was acting as a deterrent on that movement, on account of some fluctuation in price, Dr. Innis, I think that they could quite properly do it, but not other





than that. Other than that, our position is that it is a matter for Parliament, if one segment of the economy requires some special assistance, and that they should not get that assistance at the expense of either the shippers or the railways. But the major point that I wish to make right at the moment is that, while we expect a commodity rate on grain and would apply for a commodity rate on grain, it would be a commodity rate that would be first approved by the Board, and the Board would have complete control over that commodity rate, and it does not come into that aspect of a commodity rate that Mr. Frawley is now discussing with Mr. Harries. I thought that might be helpful and might clear things up."

Now, that is what Mr. Sinclair wanted me to read. I am not going to repeat it. I say that my friend said twice to you, my lord, that he wanted the Board to have a study and to fix its rates having in mind not national and economic matters that it might be necessary to consider (to use your lordship's words); he said that they would not give reflection to that. Another thing he said departed from that. You said to him:

"You would let the Board determine these rates on this what you might call technical basis, and then if in addition to that, national policy requires that some relief be given, that would be given to the producers and not to the railways. That is



your whole policy.

MR. SINCLAIR: \* Yes."

All right. My lord, my submission to the Commission is that there can be no doubt whatsoever that if the grain rates were removed from the statute, all considerations of national economic policy which have heretofore, and indeed continue to be, of major significance would go by the way. The Board is not a national planning board; no one has asked that they should be a national planning board. In my submission it is inconceivable that the welfare of Canada would be served, properly served by placing the determination of the level of grain rates in the hands of the Board of Transport Commissioners where purely rate making considerations would prevail. In my view, the Board could not, without special statutory authority be called upon to examine and assess the considerations of national policy out of which the grain rates originated in 1897 and were reaffirmed in 1925. To give the Board such special powers and directions by amendment of the Railway Act (and I am far from advocating that, nor indeed has the Canadian Pacific <sup>it</sup> advocated); to give the Board such special powers by amendment of the Railway Act, enabling them to examine and assess these considerations of national policy, would give the Board a specialized jurisdiction over one set of rates quite different from its jurisdiction over all other rates. That would indeed be the case, one segment of the rate structure being removed not only from the direct control of Parliament but even from the general jurisdiction of the Board.



Such action would, in my submission, place the Board in an invidious position with regard to the rest of the rates in the rate structure.

At this point, my lord---

THE CHAIRMAN: Mr. Frawley, I told Mr. MacPherson at the end of his argument that at some time we expect to hear from you about the Board, whether or not you wish anything done as to the powers of the Board, whether you want them extended. I am not asking you to answer now, because now we are dealing only with these particular rates, but generally we would like to know what you have to say on the question before we finish completely, about the constitution and powers of the Board.

MR FRAWLEY: Yes, my lord.

I think that this matter I am putting to the Board now is really beyond any serious question, but I would like to refer the Commission briefly to what the Board thinks itself of its own limited jurisdiction in the matter of taking cognizance of questions of national economic policy. The Board will find quite an extensive review by the Board itself in the 21% Case of what it had said in earlier cases. I assume that if the Commissioners have not read those pages they will do so later, and I will now only call attention to two of them, on page 54.

One was the Western Retail Lumbermen's Association v. Canadian Pacific et al, in which they said:

"The obligation of the railway company is to charge a reasonable rate. It is not called upon, through the reduction of the rate, to guarantee that the business will be carried on at a profit. In other words, the needs of the business and the way in which it is carried on are not the measure of the reasonableness of the rate."





And therefore, the Board would say, not being the measure of the reasonableness of the rate, we have nothing to do with it. That is logic. Now, I say just at once, in parentheses, that the needs of the western grain grower are a matter of concern and were a matter of concern in 1897, were again particularly a matter of concern in 1925, and the fact that Parliament has left it there, although Parliament has sat year after year, indicates that those are matters which are to be taken into account in having the grain rates remain at their present levels.

Then in the case of Canadian China Clay Co. v. Grand Trunk et al, which is also cited at page 54, the Board said:

"It has been held time and again that rate-regulating commissions have no right whatever to attempt to equalize geographic, climatic, or economic conditions. They are concerned simply and wholly with the question of the reasonableness of the toll which the railway company is seeking to collect for the carriage of a given commodity, irrespective of how it is made, or whence it comes."

And, frankly, my lord, I will add as a part of my argument and my submission, that the Board might very well have said -- and I am taking this from what your lordship said this morning, of course -- one might add to "whence it comes" the words "where it goes".

THE CHAIRMAN: You have been talking of national interest. Now, it is in the national interest that grain should move freely -- that is the word that has been used -- and get to ultimate markets, far distant markets. It is also to the national interest, is it not, that railways should function, be able to function properly?

MR FRAWLEY: Yes, my lord.



THE CHAIRMAN: For that purpose they must have just and reasonable rates on freight, in order to earn proper revenue, and so on. Now, as between those two, I will put to you now the question I put to Mr. MacPherson, as to what the Government of Alberta thinks of this, through you: The Canadian Pacific Railway tell us that they are satisfied that they could prove -- they are confident of that -- if time allowed it, that these rates now, whatever they may have been at one time, have ceased to be compensatory, that they are carrying this freight at a loss. If that should be established, then apparently something would have to be done about it. What, then, would you suggest ought to be done about it?

MR FRAWLEY: Well, my lord -- I say this with every respect -- it is a hypothetical question, based on---

THE CHAIRMAN: Well, it is one that may be a real live question, a concrete question.

MR FRAWLEY: That is true. Well, I will not evade your lordship's question at all, but may I by way of preliminary say that I should be asked that when the inquiry which your lordship says might be held has been held. But in the event that there was an inquiry -- and I must qualify that by saying this, my lord, because it will give more value to my answer, I think -- that inquiry must take account of all of the benefits which accrued to the Canadian Pacific at the beginning and through the years. Your lordship is not seeking to take away from me that condition.

THE CHAIRMAN: I am not taking anything from you, but if it should appear that all that has worn itself out now, and we are left barely with this about the future of these rates, that they are rates which compel the railway to carry freight at a loss, and a very great volume of



freight at a loss---

MR FRAWLEY: Well, my lord, may I put this to your lordship: I would first have to be overborne, because I would make representations to the inquiring body that that must all be taken into account -- the value of having a monopoly of Southern Alberta -- that concerns me perhaps more immediately than the others -- all those things must be evaluated. Now, if after all that had been evaluated, and under a formula which I would be compelled to accept and which I would regard as a fair formula, which had taken into account all matters, it were demonstrated that grain is being carried in Western Canada at a loss, then the Province of Alberta is not asking for charity, which it then would be. We are not asking that our grain be carried at a loss at the expense of the Canadian Pacific Railway. If that situation arises, and it should be clearly and unmistakably demonstrated that grain is being carried at a loss, having in mind all those other matters I mentioned, then we regard the maintenance of the present rates as so important that they must not be disturbed, and the loss of the Canadian Pacific must be made up to it out of the Federal Treasury.

THE CHAIRMAN: Out of what?

MR FRAWLEY: Out of the Federal Treasury. There then must be a subsidy to the railway out of the Federal Treasury, rather than that the rate to the farm economy of Alberta be increased.

THE CHAIRMAN: Well, then would you have in mind something like the Maritime Freight Rates Act?

MR FRAWLEY: That is the closest parallel I can think of. Certainly the kind of subsidy that my friends -- and I will say a word about that -- not the kind of subsidy my friends talk about, a subsidy on the means test of the





farmer.' We want no part of that at all, sir.

THE CHAIRMAN: You say that if, as between these two matters of national interest, railways on the one hand and the grain producers on the other, some relief has to be afforded, then afford the relief to the railways?

MR FRAWLEY: To the railways, out of the Federal Treasury, rather than increasing the rate to the shipper of the grain.

THE CHAIRMAN: Well, from your knowledge of the working of the Maritime Freight Rates Act would you have in mind something of that sort?

MR FRAWLEY: Yes. To be perfectly frank with your lordship, I had not thought of that, but as I now think of it, that is what the Maritime Freight Rates Act does. The railway gets the rate in the tariff, and two people pay the rate. The people in the Maritimes pay 80 per cent, and the Government of Canada pays 20 per cent. It would be something of that kind, my lord.

THE CHAIRMAN: If it should turn out after full investigation and accounting and everything, all the elements that you take into that study, and they found against you, it was found that in the long run now the railway is losing by carrying your freight, then there would have to be some evaluation arrived at of what a just and reasonable rate ought to be, and then the margin between those two would be the amount of compensation due to the railway; isn't that right?

MR FRAWLEY: Out of the Federal Treasury, yes, my lord. That is the position..

THE CHAIRMAN: That is what your Government would---

MR FRAWLEY: That would be the position of my Government, in that event. In that event, which is something -- well, I need not expand upon it; it is something that



would take a long time. It would have to be an inquiry which would, as I say, endeavour to evaluate those goods which came to the Canadian Pacific throughout the years.

THE CHAIRMAN: And, of course, you are not losing sight of the fact that both railways now carry the same, whether you call it a burden or whatever you call it -- I am not using the word in its offensive sense, but both railways are subjected now to the same rates, of course.

MR FRAWLEY: Yes, my lord.

So I leave this part of my argument by simply leaving it with your lordship that the committing of these rates to the Board of Railway Commissioners, notwithstanding the willingness of the Canadian Pacific to have the Board first in this one and only instance fix a rate before it should go into effect, notwithstanding all of that, and because of the necessarily limited (by the statute) powers of the Board and the limited way in which they could examine this particular rate -- I say that that would fall far short of the considerations which should enter into the fixing of this rate.

Now I want to pass at once to the matter which gave rise to so much controversy between myself and Mr. Sinclair in connection with the attempt that we made in our brief to show that there was traffic carried today at rates which are below the level which obtained in 1897. The importance of that, of course, is that it came from a suggestion from the Canadian Pacific that a rate established in 1897 was obviously an unreasonable one under today's conditions, and it was to meet that that we then went on in our brief to say there are rates today which move traffic at a charge below the level which pertained in 1897. We went on with the words which were misunderstood:

"Certainly water and truck competitive rates, for ex-



ample, are well below their 1897 level."

Then the final statement is:

"The grain rates are far from unique."

Now, because that gave rise to so much difficulty, I have gone to the trouble to get what Mr. Shepard said at page 19494. He said:

"As far as we are concerned that sentence could be rewritten in this way: 'Certain commodities today moving at water and truck competitive rates, for example, are moving at rates well below the rates on those commodities in 1897.'

MR FRAWLEY: That is what it meant. I really took, from something your lordship said yesterday, that your lordship read it that way. If my friend's whole statement is premised on the fact that we are saying that there was a transcontinental competitive commodity rate in 1897," --

and I should have added "which was lower than today" --

"I am sorry and we have to offer him our apologies."

The rest of what I am going to say, my lord, has value only when I say that there are rates today which move traffic at a charge below the level which pertained in 1897, and I am going to discuss truck competitive rates today, so obviously I am not endeavouring to compare that with truck competitive rates in 1897; there were not any. In support of the statement which I made, which I make again, that there are rates today which move traffic at a charge below the level which pertained in 1897, I have the following to say: There are certain difficulties in the way of getting the 1897 rates. The tariffs which applied in 1897 are not on file with the Board. The Board did not begin to function until 1903. The only exception would be where the tariffs first filed with the Board in 1904 con-





tained rates extending back to and covering the year 1897. When Mr. Harries was on the stand he gave two examples. One was the case of class rates in Pacific territory, and the other was the transcontinental movement of canned goods. Mr. Sinclair put some evidence in the record seeking to establish that the transcontinental competitive commodity rates on canned goods Eastern Canada to Vancouver were established as early as 1904. We have been making inquiries upon the subject with the Interstate Commerce Commission, and at this time I can only say that my inquiries are not complete. Under those circumstances I am not in a position to challenge Mr. Sinclair's statement that there might have been transcontinental commodity rates on canned goods in effect in 1897 which were lower than the rate of \$1.40 being charged today. So if there were rates in 1897, transcontinental commodity rates or whatever kind, which were lower than the rate of \$1.40, then that completely answers the instance which I gave in my evidence.

I now go on with other kinds of rates. Not having access to the railway's files, the only source of information is Mr. R. A. C. Henry's study of railway rates in Canada, published by the Sirois Commission. In that study, starting at page 224, there is a comparison of the various standard class rates in effect in 1897. At page 253 there is a comparable statement covering town tariff and distributing rates. Using those rate comparisons, we find -- and I will confine myself to the Alberta rates -- that, for example, in 1897 it cost 54¢ to move 100 pounds of first-class freight 100 miles; today there are rates for 100 miles which are below that figure.

I refer to page 75 and the following pages of the appendix to Part I of the Canadian Pacific submission. There we find examples of competitive rates which are below



the 1897 level. The rate from Calgary to Red Deer is now 41¢ less pick-up and delivery expense of 15¢, which means the railway's gross return is 26¢. In 1897 they would get 54¢ for that same haul.

On the Calgary to Lethbridge haul, a distance of 127 miles, they charge today 41¢ less 10¢ for pick-up and delivery expense, or a gross for the rail transportation of 31¢.

(Page 19947 follows)



In 1897 they would obtain for the same haul more than 54 cents. On a fifty mile haul in 1897 the railway received 35 cents for one hundred pounds of first class freight. Today from Edmonton to Camrose, a distance of sixty-eight miles, they receive twenty-nine cents less fifteen cents for P. and D. expenditure or a rail return of 14 cents. In 1897 the railways charge would be 35 cents for fifty miles. The foregoing are examples of rates in the prairie territory which are below their 1897 level. In 1897, from Revelstoke to Golden, a distance of approximately one hundred miles, the standard mileage class rate for first class freight was \$1.08. Today the standard mileage class rate for first class freight from Revelstoke to Golden is 95 cents.

To conclude this statement I think I must refer to what Mr. Sinclair said at page 19363 of volume 105. The Chairman said:

"Doesn't that mean this, that certain rates which exist today --"

This discussion was while we were in the thick of discussing this matter between myself and Mr. Sinclair.

"THE CHAIRMAN: Doesn't that mean this, that certain rates which exist today, and are low because of water and truck competition, are well below what they were in 1897 when there were no trucks and no Panama Canal.

MR. SINCLAIR: That may be; we are not challenging that."

It is unfortunate, my lord, that all this -- I will not say misunderstanding, but this discussion or dispute between myself and Mr. Sinclair arose because that is all that the brief of the province intended to say at any time. Today there are rates below what was





charged in 1897, and we brought the matter up simply because of the allegation contained in the Canadian Pacific brief which contained the suggestion that a rate established in 1897 was obviously an unreasonable one under today's conditions.

I want to pass on to one more point before I come to the final one. Mr. Sinclair put a stock question to many of the witnesses, and he put it to Mr. Brownlee at page 19634. I will content myself with reading it from that page.

"Can you tell me how the western farmers would be harmed if the Board of Transport Commissioners on the established principles of rate-making fix just and reasonable rates for grain; and the farmers, if they needed assistance, secured that assistance from the Dominion Government."

Then there was a question and answer by way of . . . explanation, and then Mr. Brownlee answered:

"Well, it seems to me that you have got to go a little further than just the question of fair and reasonable rates, in dealing with agriculture. In any event your suggestion of a subsidy involves a means test, and I don't see how that could be carried out at all. I think that the worst thing Canada could undertake would be the payment of any subsidy direct to the producer."

I merely call attention to the fact that the witness there was Mr. J. E. Brownlee, who was for years Premier of Alberta, and for years very intimately connected with the agrarian movement in western Canada, and who now is president of the large grain organization known as the United Grain Growers, a man not given to making inconsiderate statements. When Mr. Brownlee reads into Mr.



Sinclair's question the suggestion of a means test I agree with him because Mr. Sinclair says, "and the farmers, if they needed assistance". I have read hurriedly, I must say, what Commissioner Angus had to say about that matter last evening. I think it involves all sorts of considerations if the test is to be the need of assistance of the farmer arising out of the increase <sup>the</sup> in grain rate. It seems to me that the question Mr. Sinclair has put begs the question. Mr. Sinclair might just as well have said, "if the Board fixes a rate of \$5", or without exaggerating it too much, "if the Board fixed a rate of \$2 where it is now 20 cents, if the Board did not fix a just and reasonable rate but fixed a rate of \$2 from Regina to Fort William, then can you tell me how the western farmers would be harmed if the Board of Transport Commissioners"-- and then strike out "on the established principles of rate-making", and continue "fix just and reasonable rates for grain." Just substitute "fix a rate of \$2", and continue "and the farmers, if they needed assistance, secured that assistance from the Dominion Government." You might just as well put the question that way. If you are going to come right out and say, "give us whatever rate we ask for, the farmers cannot be hurt; you are representing the farmers and you do not want the farmers hurt, and they will not be hurt because they can obtain a subsidy", then speaking for the farmers of the province of Alberta we are not asking for a subsidy. We are not going along with the Canadian Pacific and asking for a subsidy. In answer to what your lordship asked me a few minutes ago I have repeated that position.

We are not asking for a subsidy in the province of Alberta, but I say, as I said before, if in the last



analysis there must be aid to the Canadian Pacific because they are carrying our grain at a loss then they should have that, and it should come from the Parliament of Canada.

Finally I want to discuss very briefly, although it is an important question, the proposition that the railways have had since 1897 and since 1925 a forum in which they can redress any wrongs which they allege have been inflicted upon them by the Crow's Nest rates. That forum is the Parliament of Canada. I wish to make it abundantly clear that Alberta does not take the position that always and forever the Crow's Nest rates must remain unaltered. Parliament fixed the rates in 1925. You need go no further back than section 325 of the Railway Act. Parliament can change the level of those rates upwards or downwards.

I must say that I have always been amazed that, when the Canadian Pacific applied in October, 1946, for a general increase in freight rates, they did not at the same time file a concurrent application in Parliament seeking to have the one remaining segment of their rates increased. They applied to the Board of Transport Commissioners. I put it that at the same time they could have made an application to the Parliament of Canada for a 30 per cent increase in the grain rates.

However that may be, if the Canadian Pacific now feels that the Crow's Nest rate situation is intolerable, if it now feels that such rates deprive the railway of needed revenue, and they are greatly concerned as to the shippers of the non-grain traffic, then Parliament is there to whom an application can be made for an increase in these rates, for a simple increase in these rates.





Mr. Spence said this morning that he thought it was time to answer that argument of ours, and he said the Canadian Pacific is doing that very thing now. He said that the Canadian Pacific is applying to Parliament through the medium of this Commission. Well, my lord, it is really quite the contrary. Instead of seeking redress in Parliament the only petition they are making is that Parliament should repeal its own statute, should reverse its position, and I say that is the very antithesis of going to Parliament to seek the remedy which they say so feelingly that they need. We are accused of being afraid of justice. That is what my friend, Mr. Spence, said, that we are afraid that just and reasonable rates would be fixed, ~~that~~ we are afraid of justice. I put it equally rhetorically, what is the Canadian Pacific afraid of? Do they fear justice at the hands of Parliament? Instead of asking for this statute to be repealed ~~why~~ do they not have confidence in Parliament, the confidence that they say we lack in connection with the Board? Why do they not go to Parliament and seek in an orderly businesslike way the remedy to which they say they are entitled?

THE CHAIRMAN: Are they not asking the Commission to recommend to Parliament that that very thing be done?

MR. FRAWLEY: Not that the rates be increased.

THE CHAIRMAN: No, that the statute be repealed.

MR. FRAWLEY: That is right, my lord. I say they should not be doing that at all. I say that if they have ~~conviction~~ conviction in their position, not only today but right along they could have done what I suggest. Who is to say that in October 1946, Parliament would not have increased the rates? I do not want to mislead anybody as to where the province of Alberta would be. The province



of Alberta would be there opposing that application just as we opposed the application to the Board, but that is beside the point. We were not successful in opposing the application before the Board. We might have been just as little successful in opposing an application to Parliament. I really have no patience with people in this day and age who, in speaking of this country of ours -- and it is not the time to talk patriotism or anything of that sort; I am only going to recall what Mr. Brownlee said -- say that we would not get anything in Parliament but politics.

Today the personal make-up of the Canadian Government today needs no words of commendation from me, and therefore I will leave that entirely to your lordships own conclusion. It seems to me that there is just not even any sincerity in that.

THE CHAIRMAN: I suppose we can take judicial notice of that.

MR. FRAWLEY: At the moment I think you can take judicial notice of the calibre of the men whom we have in the government of Canada, and I will say in the Parliament of Canada also. This matter could have come before the Government of Canada in a proper businesslike way. We went to them when we appealed from the judgment in the 21 per cent case.

You see, my lord, there is a complete lack of willingness to look at it realistically. We went to the Cabinet. We appealed under a statute, of course, but surely the Canadian Pacific has one friend in Parliament who could introduce a bill. That is the practical application of it. I simply close by calling attention to what Mr. Brownlee said. Mr. Sinclair asked him:

"Now, you would agree with me, Mr. Brownlee,



in this, that the political arena is not noted for a place to secure a judicial revelew of an issue?"

Mr. Brownlee did not go along with that. Mr. Brownlee is a man with long experience in the political arena. His answer was:

"Well, no, I am not going to go that far. I have a little higher repsect for our governments than to believe that the governments, either dominion or provincial, are entirely influenced by politics and I think that on any question affecting the welfare of Canada or any part of Canada a fair and proper solution of a problem can be obtained from the government."

If the Canadian Pacific Railway Company want justice let them go to Parliament for it. When I was a law student I saw a little notice on the door of the chambers of a judge whom I had occasion to visit. The little note on the door of his chambers read:

"Many people who say they are looking for justice are lucky if they do not get it."

That is all, my lord.

THE CHAIRMAN: You say you wish the C.P R. good luck?

MR. FRAWLEY: I wish justice for the C.P.R. I really do, my lord.

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ARGUMENT BY MR. SHEPARD

MR. SHEPARD: May it please the Commission --

THE CHAIRMAN: You are speaking for the Government of Manitoba?

MR. SHEPARD: Yes sir, and I think in view of the hour my first comment should be that I intend to be as brief as I can be consistent with my duty. Secondly, I should like to say that on behalf of Manitoba I support the arguments put forward by my friends, Mr. MacPherson and Mr. Frawley, with perhaps one exception which was perhaps not so much an argument as it was an expression of attitude of their governments, and that has to do with the matter of subsidy which you, Mr. Chairman, asked them about.

THE CHAIRMAN: How would you answer the same question?

MR. SHEPARD: I have considered this matter, and this would be the view of Manitoba. We have consistently stated that the C.P.R. revenues should be sufficient to cover their operating costs and to provide what may be properly determined as an adequate return.

THE CHAIRMAN: Return on what?

MR. SHEPARD: A return in addition to their costs, return on investment or return on the requirement standard, whichever way it might be fixed. It is perhaps of importance to the Commission to know whether Manitoba would favour either a subsidy or an increase in the freight rates on grain as a method of providing additional revenue if at some time in the future it is demonstrated to the satisfaction of all concerned that grain is in fact being hauled at a loss.



In other words, the amount of revenue obtained not being sufficient to cover the cost of handling the grain plus a margin.

This is, of course, as my friend Mr. Frawley said, a purely hypothetical question.

Manitoba says that whether a subsidy should be paid at some future time, or whether rates on grain should be increased at that time, depends entirely upon conditions existing at that time. The governing conditions would include such factors as the price of grain, the general prosperity of the farmer and his ability to pay, the general level of business activity in the country as a whole, together with the amount by which grain rates are shown to be non-compensatory.

Under some situations the western farmer might be able to pay an increase in grain rates. One example was given to us by Dr. Angus the other day when he suggested an inflation, of perhaps, 10:1. There would be no argument there. I think the grain rates would have to go up.

Whereas under other circumstances he would find even a small increase almost unbearable. Similarly, a relatively small increase might be borne by the farmer under buoyant agricultural conditions, whereas a large increase, even under buoyant conditions might have a serious impact on the farmer - one that could not be endured.

We need only think of the thirties in that respect. It is for these reasons that Manitoba is of the view that a hypothetical question, based on hypothetical circumstances, should not be answered, where such a



question pertains to a matter of vital national importance such as the welfare of the western farmer.

The danger in answering hypothetical questions is that if a formula which might result from the answers to such questions were given effect to, in other words, at some later date, then when the answer was devised, it might be applied to conditions vastly different from those existing at the time the formula was devised. In other words, Parliament should deal with the question on the facts as they exist when the question is before it.

Probably taking the matter a step further, my lord, I made a note today, as you were discussing the matter with other counsel, that the concept perhaps is not so much whether the subsidy should be paid to the producer or to the Canadian Pacific, but what is the subsidy - if it is to be called such? What does the subsidy really represent?

If it represents a payment to the Canadian Pacific for fulfilling a statutory duty imposed on the Canadian Pacific as part of the national policy, then I can see no reason why the Canadian Pacific should object to receiving that payment, whether they call it a subsidy or a payment in fulfillment of a statutory obligation or for services rendered under a statutory obligation; but it does seem to me that it is much simpler to pay it to the Canadian Pacific, and it is easier to administer, I suggest, to the railways, not just the Canadian Pacific, and that it is, in fact, a payment for services rendered under a duty imposed by Statute, and that duty is imposed by the Parliament of Canada under the Statute in an effort to fulfil a national policy which I would like to





discuss a little later.

THE CHAIRMAN: Do you think that the principle of the Maritimes Freight Rates Act should be made applicable in this case?

MR. SHEPARD: I have not given that too careful thought, but I think perhaps it could be, my lord.

COMMISSIONER ANGUS: Would you welcome an investigation by the Board designed either to remove the question, or to make a hypothetical question an actual one? Would you welcome an investigation by the Board to find out what a compensatory rate should be so that then your question would cease to be hypothetical, for it would either disappear or become a real question?

MR. SHEPARD: I do not think that my Government would authorize me to say that we would welcome it, but we certainly would not shrink from an investigation by the Board.

It is a question we have discussed with government officials as to whether an investigation had better be by the Board or possibly by a Parliamentary committee which would have access to the Board's experts or something of that kind or with access to other experts in conjunction with the Board's experts. The actual machinery of how the investigation should be carried out I think would require a fair amount of study, and we have not come to any conclusion on that.

Now, I would like to comment very briefly, if I may, on the Canadian Pacific evidence, and its general approach to this whole problem.

I have two comments to make in this regard. One is that it does seem to me that while this Commission has ruled that there is to be no consideration whether grain



rates are compensatory or not, that the Canadian Pacific's entire approach, in their application for repeal of this section of the Act has been on the assumption which it has taken by inference right through the proceedings, that the rates are not now paying their way. And I would simply like to point out to the Commission that there was no evidence before them that the rates today are not compensatory.

Mr. Armstrong in Volume 96 at page 18105 referred to the abnormally low freight rates on wheat as being clumsy, inadequate, and an ineffective method of giving assistance to the wheat growers in Western Canada.

Now, that statement, which is, perhaps, harmless in itself, does imply that they are making the entire approach to this Commission on that assumption - probably because they have made a study of the subject - but actually in their thinking, as to the compensatory nature of the rates today. . Consequently it does seem to me, from the argument and the evidence, that the Canadian Pacific has attempted to take an extremely narrow view of the entire matter.

I would like to read a note which I took during the course of the argument made by Mr. Spence this morning:

"Grain rates should be fixed justly and reasonably as other rates, without the application of any extraneous considerations."

Now, Mr. Chairman and Dr. Angus, it seems to me that the extraneous considerations which my friends speak of go to the core of the entire matter, and if we consider, just for a moment, the original agreement in 1897: we



had two freely contracting parties. And I would suggest that the Dominion Government, being one of the parties, derived definite benefit from the contract, because at that time Parliament was endeavouring to formulate a national policy which would integrate Canada as a nation, both economically, probably, and politically, certainly.

And so it was that one of the factors which the Dominion Government considered was essential to a United country to carry out or to assist in the carrying out of this national policy of economic and political unity, was transportation to and from Western Canada, and the settlement of that area.

And it does seem to me that the Canadian Pacific is inclined to ignore the benefits that that national policy brought to the Canadian Pacific.

The Canadian Pacific was the other contracting party to the original agreement, and what did they derive from it? All the things that my friends from Saskatchewan and Alberta have already argued and I won't mention them again.

But in addition, they derived revenue from a tremendous volume of traffic that developed both on the export of primary products grown in the west, and on the import of manufactured goods produced in the east, both of which were substantial in volume, and both of which were long haul traffic.

I do not think it is a correct view to take, to be as narrow as the Canadian Pacific has sought to be in such a statement as the one I read from Mr. Spence:

"That grain rates should be fixed justly and reasonably as other rates without the





application of any extraneous considerations."

The matter is part of the national policy at this time, and if the railways required revenue, or think they are carrying traffic at a loss, I submit, with my colleagues, that it must be still a matter for Parliament, because it is only through Parliament that matters of national policy are settled or dealt with.

Then, I have already suggested that there is no evidence before this Commission as to the compensatory nature of the grain rates; but I would like to suggest that there is evidence that the grain rates have been profitable in the past, and I think you, my lord, were discussing with Mr. MacPherson, when he was arguing, the question of the attitude the Canadian Pacific had in 1925 before Parliament, whether they opposed the situation.

Unfortunately, I have no evidence on that, but I thought it might be useful to refer in Volume 105 to page 19412 where there is a quotation from Hansard of June 25, 1922, page 3552: and this occurs in Mr. Moffat's evidence which was filed.

I shall read a couple of sentences from it. This was in 1922 at the time of the general reduction cases before the Board of Transport, and at a time when there was a discussion going on in Parliament as to railway costs generally, and as to the advisability of revising the terms of the Crow's Nest Agreement.

The Honourable A. K. McLean of Halifax, Chairman of the House Committee said this:-

"It will take only a moment to give to the House these commodities and the reduction



which the railways proposed. They proposed a reduction of 20% in the grain rates."

And he goes on to mention other reductions. I shall not read them all. Then a little later on he says:-

"In fact, in the Province of Manitoba the grain rates under this proposal would have been practically down to the Crow's Nest Agreement rates.

In Alberta and Saskatchewan the difference would have been anywhere from 1¢ up to 2¢."

That was the voluntary proposal by the railways before the Parliament of Canada in 1922, and it would, in my submission, indicate - -

THE CHAIRMAN: That was the proposal to have rates fixed somewhere between the Crow's Nest rates and the rates which had been authorized during the suspension?

MR. SHEPARD: That is right, my lord. And in fairness to the Canadian Pacific I should add that Mr. Sinclair cross-examined Mr. Moffat on that, with a view to showing - and perhaps he would rather deal with it himself in reply - with a view to showing that the rates of return were under review by the Board at that time for a general decrease, and as a result the Canadian Pacific's view, I think, as a result of the reimposition of the Crow's Nest rates on grain, was that it was not possible to reduce the rates on other commodities as much as they might otherwise have done. I think that was the Canadian Pacific's view at that time.

I think that the profitability of rates in the past is perhaps indicated from the fact that from 1902 to 1908 the rates were lower than the Crow's Nest level. And that



is referred to in Volume 105 at page 19408.

I would like to deal briefly with each of the submissions of the Canadian Pacific in their summary appearing at pages 188 and 189 of Part I of the C.P.R. submission.

The first submission reads as follows:-

"1. In fairness and equity, these rates should be regulated in the same way and by the same tribunal as rates on other traffic."

I have already mentioned my views as to why these rates are not the same, because they came into being through a contract which was entered into in an effort to give effect to the national policy of development in the west, and because they are an integral part of that national policy. So we say that they cannot be treated as other rates; and in addition to that reason, there are many benefits which my friends have already dealt with.

The Canadian Pacific in Volume 96 at page 18117 thought that the grain rates, if set by the Board of Transport, should be fixed at a level which would be proper, bearing in mind the economic well-being of the farmer.

(Page 19970 follows)





The Canadian Pacific Railway agreed at Volume 96, page 18117, that grain rates, if set by the Board of Transport Commissioners, should be fixed at a level which would be proper, bearing in mind the economic wellbeing of the farmer. Yet the C.P.R. does not consider that the Board of Transport Commissioners should be an economic planning board, and I refer you to Volume 96, page 18128 and Volume 94, page 17858. This being so, and since the fixing of grain rates at a level to protect the economic welfare of the farmer would involve economic planning, the C.P.R. attitude does not appear to be consistent. It is submitted that the welfare of the Western farmers is of such importance to the national economy as to require grain rates to remain under the jurisdiction of Parliament. Parliament, and Parliament alone, being the authority responsible for formulating and giving effect to national p . . .

and it is submitted that this is so today as much as it was in 1897.

Then the second submission of the C.P.R. reads:

"The level of grain rates in Western  
half  
Canada is less than/that for comparable  
movements of grain in the Western United  
States."

This is admitted. It is, however, pointed out and emphasized that the level of rates between two countries is only of significance for comparative purposes if the costs and operating conditions in the two countries are similar. We refer to our cross-examination of Mr. Jefferson with reference



to United States-Canadian comparisons; Volume 78, page 15727, and those following. Quite apart from the difference in operating costs, including wage levels, between Canada and the United States, many factors must be evaluated before any significant comparison can be made between the rate levels in the two countries. These factors include rate circuitry, terminal facilities, extra handling, standard of service, freight classifications, terrain, climate, traffic density, and density of population, and there may very well be others.

The third C.P.R. submission is on the question as to whether the rates are compensatory, and because of your ruling .Manitoba makes no submission in this regard.

The fourth submission deals with the question of subsidy to the agricultural industry rather than to the railways, and I have already expressed the views of Manitoba with reference to that matter.

The fifth submission deals with the fact that the price of grain has doubled, has more than doubled, in Western Canada since the Crow's Nest rates were established. In other words, the C.P.R. seems to contend that the price of grain has doubled, and, therefore, grain rates should seek their proper level. The C.P.R. has stated in Volume 6878, page 15682, that it is not prepared to have grain rates geared to the price of grain. This being so, the price of grain does not seem to bear any relationship, direct or indirect, to freight rates on grain, and it is, therefore, difficult to understand why the C.P.R. has put this point forward among its submissions.



The final point in the C.P.R. submission is that the rates are a pure historical survival.

"The Crow 's Nest rates are a pure historical survival. They are not related either to the cost of service nor to the value of service. Changes which have occurred since they were introduced have made them totally obsolete, and their effect upon the railways and upon the rates charged on other traffic makes it dangerous to retain them."

While it may be that the present grain rates might be termed an historic survival this fact does not prove that they are today either obsolete or unnecessary. The large fluctuations in the price of grain, apparent even from the most cursory study of the 20-year period from 1928 to 1948, indicates that the Western farmer, as a primary producer, must have these costs, including freight rates, at the lowest possible level. Today's rates at today's volume of traffic may very well be adequate, in spite of rising railway costs. There have been many technological advances which are bound to have reduced railway operating costs, and I would refer you to the C.P.R. appendix to Part I, pages 28 and 29, and Mr. Moffat's evidence on that in Volume 105, page 19408.

To say that rates set in 1897, and still in force today, are necessarily too low today is to assume that 1897 rates were at a proper level when set originally. It is possible, if not probable, that they were too high when set in 1897, and I would





refer to Volume 66, page 13758, and to the evidence of Mr. Moffat in Volume 105, page 19408.

Canada is predominantly an agricultural nation. National prosperity is largely dependent on the export market for its agricultural products. Unless the producer of those products is assured that transportation charges borne, in whole, or even in part, by him are as low as possible, production may very well decline with a resulting decline in national prosperity, not the least component of which will be a decline in traffic, and, therefore, in revenue to the railways of Canada.

It must not be forgotten that the railways have a monopoly on the grain traffic in this country. On many commodities, the shipper is protected as to the level of transportation charges by competition from other forms of transportation. It is submitted that by fixing grain rates Parliament has, in fact, provided to the farmers of Western Canada that which to other shippers is provided by competition from other forms of transportation, in order to insure that this monopoly traffic does not bear an undue burden. The railways are guaranteed a heavy and regular volume of grain traffic and they can afford to carry it at a rate which may appear low by comparison with other rates at which other traffic moves at less volume. Because of the monopoly position of the railways with respect to grain traffic it is submitted that unless Parliament retained control over the level of the rates set, there would be a very strong tendency on the part of the railways to increase such rates to offset



reductions in revenue occasioned by the reduction of rates in other areas to meet competition. With regard to that, I would like to refer to three pages from Volume 94 in the evidence of Professor McDougall, page 17836, page 17848, and pages 17849 and 17850. This was as a result of a question, or a series of questions, put to Professor McDougall by Commissioner Angus, and I will just read the first reference I have given you. It is just one question and answer. The question is:

"Q. As long as they have a monopoly on some transportation, would the effect of this prove to be to force that transportation, that share of the transportation that was subject to monopoly, to bear the full weight of bringing the earnings up to the required level, should they be impaired in other directions?"

To that question Professor McDougall said:

"A. There would be a tendency in that direction, yes."

Then on page 17848, Commissioner Angus says:

"Q. Does that mean that there would not be any abuse of monopoly power if high rates were exacted from the part of the traffic that was really a monopoly so long as the total returns to the railways were not excessive?"

And Professor McDougall says:

"A. I would think so."

In conclusion it is submitted that the evidence adduced before this Commission demonstrates, firstly, that grain rates must be kept under the control of



Parliament, since Parliament is the authority responsible for the interests of the nation as a whole and the welfare of Canadian agriculture is vital to the national interest; and, secondly, that the primary producers of Western Canada consider that the present level of grain rates has been guaranteed to them by statute, and no valid reasons have been advanced for the removal of that guarantee. National policy with respect to Western Canada has not been fulfilled.

It is, therefore, Manitoba's submission that this Commission should recommend that Parliament retain direct control over grain rates and that the present level should be continued.

THE CHAIRMAN: Mr. Sinclair, have you any remarks to make?

MR. SINCLAIR: Yes. In relation to the question your lordship put to me, and that was: Did the Canadian Pacific object in 1925? I have had some help in trying to put my finger on something to support the statement that I made that I thought we certainly objected. I know that in 1922, we objected strenuously to the reinstatement of the Crow's Nest rates on the bases of the 1897 contract. We objected to that strenuously in 1922. We kept on pressing the government ---

THE CHAIRMAN: Pardon me, but will you agree that there was some adjustment on another basis?

MR. SINCLAIR: We had, at that time, the suspension of the westbound rates from the East, and even when we had them suspended, we had objected strenuously to the Crow's Nest rates. That was just three years before. I feel certain that the Canadian





Pacific did object. It certainly has always been my understanding; it has always been told me that we did object. I did think I could put my finger on something.

THE CHAIRMAN: Mr. Shepard read something to us: from the proceedings in Parliament that would show that your objection consisted of suggesting another rate.

MR. SINCLAIR: Yes, we said: "You leave these rates under the jurisdiction of the Board, and on account of the fact that there was going to be a downward trend in all rates we will voluntarily, anticipating the Board's order, bring them to this level." We wanted sufficient money to meet our requirements and to make a fair payment to our stockholders.

THE CHAIRMAN: The level which you then suggested was, in your opinion, a compensatory level?

MR. SINCLAIR: Yes; I am sorry that is all the statement I can make with regard to that.

There are many statements, of course, made by my friends from the provinces in opposition to our proposal which I do not intend to reply to because my views are expressed in my argument and also in Mr. Spence's. Mr. MacPherson referred to the 1896 report and to the fact that the directors of the company had said that the interests of the country were concerned in the question of this Crow's Nest Railway. Now, I suggest that the interest the directors were referring to was the fact that unless Canadian Pacific immediately built - and I underline



the word "immediately" - a railway into the Kootenay the American lines which were already in there were going to make further inroads in that area of British Columbia, and it would have been a hinterland to the American economy rather than a hinterland to the Canadian economy, and it had nothing to do with the agricultural problem that was the interest of the county at large.

Mr. MacPherson also referred to the lands the Company received. The point I make on the lands is that the Government of Canada did not give us those three odd million acres which Mr. MacPherson referred to arising out of the building of the Crow's Nest line - -

THE CHAIRMAN: You told us that this morning.

MR. SINCLAIR: Yes, they came from British Columbia. Mr. MacPherson goes on to talk about lands that we received under our contract of 1880, and he said that it was all part of the policy. I do not know if I followed him correctly, but he said that by the fact that we got lands in 1880 and we made another agreement in 1897, but he did not say anything about - -

MR. MacPHERSON: I thought I had made it clear. My argument was this, that in 1896 they had this great bulk of land - this 25 million acres - and they wanted to get it settled. They took this action to encourage settlers to come in by guaranteeing them a fixed rate for grain.

THE CHAIRMAN: That does not surprise you, Mr. Sinclair, does it?

MR. SINCLAIR: That was one of the reasons we



entered into the agreement. It certainly does, because I do not think it has anything to do with it. The Canadian Pacific sold their lands because of the fact that they had lands available, and, compared to what farm lands were being sold for in the United States and other parts of the world, they were a good buy, and the Canadian Pacific - -

THE CHAIRMAN: The lower the freight rates the better the buy.

MR. SINCLAIR: I do not think freight rates had anything to do with it except that the farmers felt assured that from the Canadian Pacific they would get just and reasonable rates, and the Company assured them that that would be the fact. That is my submission. Mr. MacPherson made quite a point out of the agreement itself, and said that the Board of Transport Commissioners was contemplated - -

MR. MacPHERSON:           Railway Commission was contemplated.

THE CHAIRMAN: Was contemplated?

MR. SINCLAIR: Yes, was contemplated. I say that what happened there was that with regard to land south of the main line in British Columbia traffic moving to and from those lines was to be put under the Board for rate control purposes, but there is not a single thing in the contract that says that the whole Canadian Pacific western lines were to be put under a Canadian Board of Transport Commissioners.

THE CHAIRMAN: Does not the very phrase indicate that there was, or likely to be at some time, a Board of Transport Commissioners to regulate freight rates?





MR. MacPHERSON: My point was that a Board of Transport Commissioners was in contemplation at the time by the Government.

THE CHAIRMAN: When would that inquiry, which culminated in the formation of the Board then, begin?

MR. MacPHERSON: I am not sure; I think it was 1901.

MR. SPENCE: I believe so. I think 1899 to 1901; Dr. McLean's investigation.

THE CHAIRMAN: Yes.

(Page 19980 follows)



MR. SINCLAIR: The point I am making is that Mr. MacPherson dealt with clause 9 of the contract of 1897:

"So soon as the said railway --"  
(That is, referring to the Crow's Nest Railway).

THE CHAIRMAN: Yes.

MR. SINCLAIR: "--is open for traffic to Kootenay Lake, the local rates and tolls on the railway and on any other railway used in connection therewith and now or hereafter owned or leased by or operated on account of the company south of the Company's main line in British Columbia, as well as the rates and tolls between any point on any such line or lines of railways and any point on the main line of the Company throughout Canada . . . shall be approved by the Governor-in-Council or by a railway commission, if and when such commission is established by law. ."

THE CHAIRMAN: Do you mean to say that they had in mind a commission which would have only to deal with this particular part of the country?

MR. SINCLAIR: Yes, my lord, because under our charter we had power to control our rates until we made ten per cent.

THE CHAIRMAN: Yes.

MR. SINCLAIR: And when we entered into that agreement in 1897, if rates had ever fallen below a compensatory level in perpetuity, as we saw it then, we could have had freedom to raise other rates up until we were able to have a return that would give us.



ten per cent of our investment. The Government knew that, and the best the Government could get from it, I suggest is that they would, the railway committee would or the board of railway commissioners would have control over the just and reasonable level of rates or the fixing or prescribing of rates, in just one small segment of our traffic.

Now, my argument is this, that if the Board of Transport Commissioners had been established, or the railway commissioners, and if the Canadian Pacific's rate structure had been under that Board, there would never have been this "in perpetuity", because at that time our contract of 1880 was standing there, and it was not until after the 1897 Agreement was passed and became operative that another statute (I think it was in the following year) -- that the Company agreed to have its rates controlled by a board, if established. The way that legislation reads was, if this statute is effective.

THE CHAIRMAN: If the statute is what?

MR. SINCLAIR: There was some question about the effectiveness.

THE CHAIRMAN: Now, when did your Company first come under the control of the Railway Commissioners?

MR. SINCLAIR: In 1903.

THE CHAIRMAN: As soon as the Commission was formed.

MR. SINCLAIR: Yes, but that was on account of something apart from this Agreement entirely. The point I tried to make in cross-examination of one of the witnesses and which Mr. MacPherson picked up for his argument to turn against me, I say has not been



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answered; and that if the C.P.R. rates, the Canadian Pacific railway rates had been under the jurisdiction of the Board in 1897 as they are today, these grain rates would not have been taken out from the jurisdiction of that Board, and I say that with all the force I can, that all the history proves that. It was considered by the Company and a check of the issues that were being discussed in 1922 will show this, that it was considered by the Company that giving up ---

THE CHAIRMAN: Why then did not the Company insist on this sort of clause, that the rates should be at the level provided for, three cents below the 1897 rate, until the Commission had been created to deal with rates generally? Isn't that what they would have done naturally?

MR. SINCLAIR: No, my lord, because they did not anticipate that they would ever give up their freedom to put rates other than these at what level they wished until they received ten per cent.

THE CHAIRMAN: Something happened, and they did, because you tell me they came under the jurisdiction of the Board and the Board was created in 1903.

MR. SINCLAIR: I say that happened subsequent to our entering into this agreement.

THE CHAIRMAN: Yes, but what reason have you to think that the words which refer to a commission in this contract had not in mind the commission which ultimately was created in 1903? I don't see what else could have been in mind.



MR. SINCLAIR: My lord, that is not my point. It may well be that the Commission that did come into being was in contemplation, that it was in contemplation that the Commission would have jurisdiction over Canadian Pacific.

THE CHAIRMAN: I know, but you see, the whole point you are engaged in, if I remember it rightly, is that these words "in perpetuity" would never have been consented to by the directors of the Company.

MR. SINCLAIR: That is not my point.

THE CHAIRMAN: I see. I misunderstood you then.

MR. SINCLAIR: I am sorry, my lord, that is my fault.

THE CHAIRMAN: What is your point

MR. SINCLAIR: My point is this, that the Government would not have felt it was necessary to ask for a fixed rate in perpetuity.

THE CHAIRMAN: Well, that is not far away from what you said.

MR. SINCLAIR: You said that our directors --

THE CHAIRMAN: Would not have agreed, if they did agree.

MR. SINCLAIR: Yes, but I say the Government who saw this part of national policy and fixed the stable rates under parliamentary control, has never since 1897 ---

THE CHAIRMAN: These words would not have been found in the agreement, "in perpetuity"?

MR. SINCLAIR: I say they would not have been found, in perpetuity or at a fixed level under



statutory control, would not have been found in this agreement if the Board of Transport Commissioners at the time the agreement was made had jurisdiction over the level of Canadian Pacific rates, because the only check that was on the Canadian Pacific at that time was the check of ten per cent on the capital investment.

THE CHAIRMAN: Well, I must admit I find difficulty in following.

MR. SINCLAIR: I am sure, my lord, it is because I cannot make it clear.

THE CHAIRMAN: I know all you have asked us to do is to draw a certain inference.

MR. SINCLAIR: That is right, my lord.

THE CHAIRMAN: And the inference is that this contract would not have been made in perpetuity if both parties had known that there was <sup>MR SINCLAIR:</sup> going to be a Board of Railway Commissioners./ I don't think the Government would ever have asked for it.

THE CHAIRMAN: I see.

MR. SINCLAIR: Because they would have had a Board to fix a just and reasonable level of grain rates.

THE CHAIRMAN: Then was no attempt made in 1903 to have Parliament change the contract? Did you come along and say: "Now, we have a Board. If this Board had existed five or six years ago, this contract would not have used these words 'in perpetuity'". That was not done.

MR. SINCLAIR: Of course not, my lord, and the answer is simple and clear, I suggest, because at that time the Crow's Nest level of rates was not





the operative rate on grain. Rates were still compensatory and so the grain carrying problem I am sure, was not in the minds of the directors of the Canadian Pacific or the people who were attending to its affairs.

Now, to use Mr. MacPherson's word, the "benefits that flowed to the Company from <sup>the</sup> 1897 agreement were great" (according to my notes).

"The subsidy in cash was the last of these benefits."

My lord, I say that that was the only benefit that the Dominion gave us, and we paid them back for that \$3 million in part by this 50,000 acres of coal land. I say that every other benefit that my friends point to (and particularly my friend Mr. Frawley) the Canadian Pacific had already committed themselves on and it would have accrued to them; and that this, as I said before, is completely irrelevant.

Now, in regard to the comparison of American rates. It was asked a moment ago what the spread was in 1897. The spread then between Whately to Duluth versus Regina to Fort William, was 17 cents. That spread today is 35 cents, twice the spread that existed at that time. That will be found in our appendix, I think around page 90.

Now, Mr. MacPherson said, referring to the increase in mileage to which this applied, he said that there was a large percentage increase in mileage to which the Crow's Nest rates were applicable but (to use his words) what of it? Well, the fact is that in 1922 when we objected to the Crow's Nest rates being reimposed, not only ourselves but our friends from the Canadian National came along and



objected to them. I say that there is a lot to it, and one of the greatest problems and part of the answer, I say, to the transportation problem in Canada today is to have adequate revenues to the railways; and I say these Crow's Nest rates are preventing an equitable distribution of the burden, and that if they could be in a position where they would bear it, a great step forward would be made in meeting and solving a problem that is confronting so many of us, and that is how to secure sufficient revenues to make a railway system operate adequately and efficiently.

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Mr. MacPherson said that there is no evidence that the 1897 rates were just and reasonable or fair rates. He then read from 29 C.R.C., in which Commissioner Boyce said -- and he read it himself -- that the rates that he was dealing with were fair rates in 1897, just and reasonable rates.

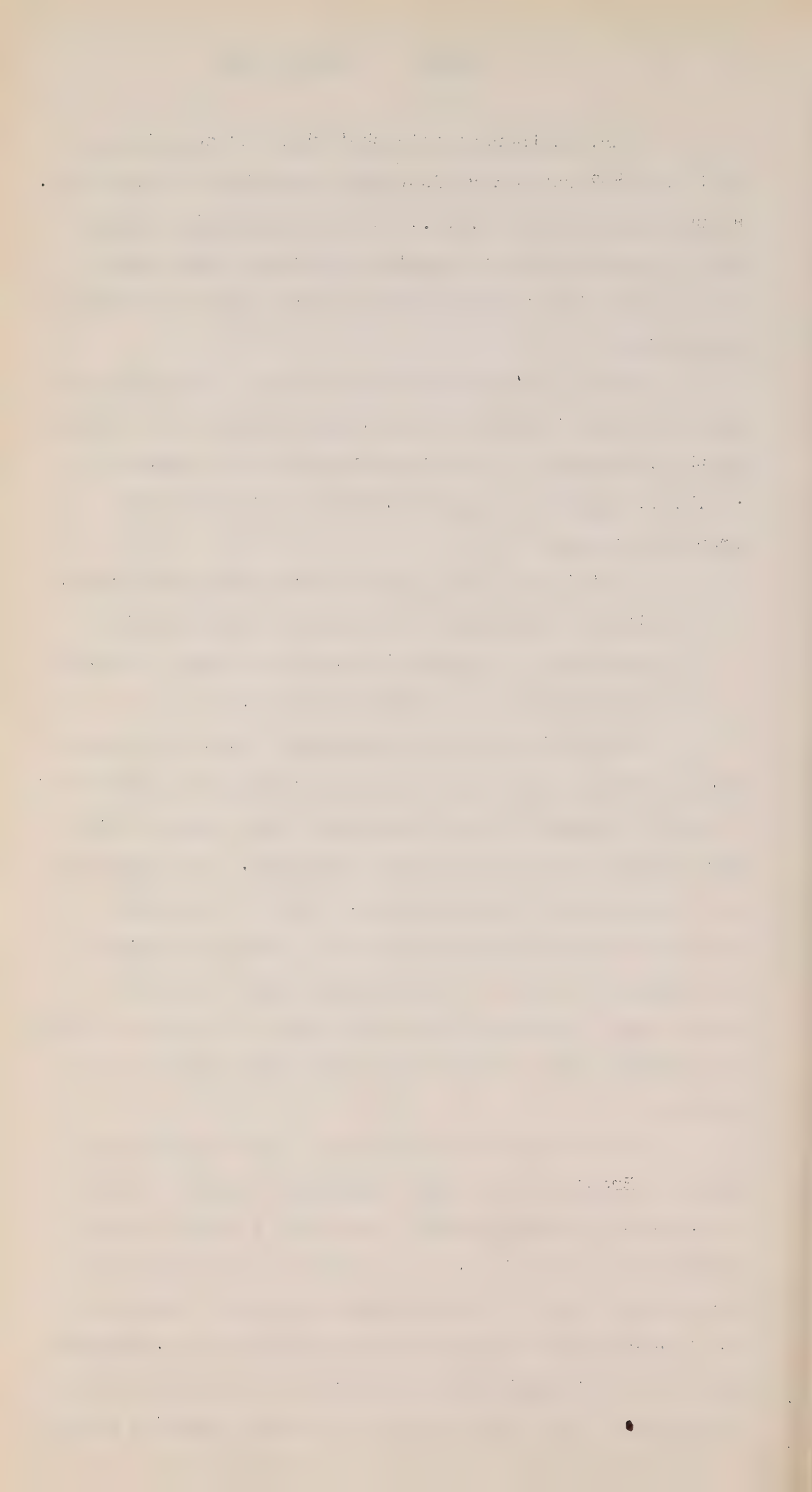
Then he 'referred to that case, and your lordship asked him to read it twice, and he put a lot of stress on this. That is Re Crow's Nest Pass Rates, volume 30 C.R.C., page 32, at page 46, and he put particular emphasis on this:

"It is not to be supposed that Parliament would hesitate to exercise its powers for the correction or amendment of legislation which is found to operate prejudicially to the public interest."

Why this attack on Parliament? Well, the public interest being there referred to had nothing to do with us; it had to do with the fact that there were shippers that were in difficulty through this agreement. The agreement, as I said before, was unworkable. That is the public interest that is being referred to -- nothing to do with the Canadian Pacific -- and no wonder that the Chief Justice said Parliament would look after it, there was such a tremendous body of voters; of course they would look after it.

My friend Mr. Frawley put a lot of emphasis on what Mr. Brownlee said about Parliament in answer to me. Mr. Brownlee was most careful, my lord, I submit, in his answer to me about that. He said they are not entirely influenced. Well, I want freight rates to be fixed in a place where there is no political influence. Mr. Brownlee said that Parliament was not entirely influenced by matters of politics, and I agree with my friend Mr. Frawley that he





was an experienced man, but I say again that it is wrong to have freight rates fixed on a political basis.

In Mr. Shepard's argument he referred to the American comparison, and he gave certain factors that he said, I think his thought was, vitiated the comparison. Nobody has suggested that there is any vitiating of the comparison in the sense of dealing with it as Mr. Jefferson dealt with it, and when he filed that exhibit it showed that on the Great Northern and Northern Pacific the ton mile revenue from grain was greater than all other traffic, while on the Canadian Pacific on western lines the opposite was true. Now, there is the test of whether the comparison is vitiated or not by these factors to which Mr. Shepard refers.

Mr. Shepard also said that the price of grain has doubled, according to the Canadian Pacific, more than doubled. It is difficult to understand why they put this forward. It is not difficult at all if Mr. Shepard would have given full consideration to what I was trying to say, and that is this, that it shows ability to pay, for one thing. The second thing -- and this is most important -- is that it shows the different levels in the economy of 1897 as compared to 1949-50. Here is grain at 70¢ in 1897; here is grain at over \$2.00. That shows a different level of the economy, surely, and the railways are not immune from increasing costs. Things that make grain rates go up to a level to meet the farmer's increased expenses also put our costs of service up to some degree. That is the reason why we put it forward.

THE CHAIRMAN: You do not put forward as a general proposition, do you, that rates should be related to the ability to pay? I suppose not. We have heard that before.

MR SINCLAIR: Oh, not completely, no.



THE CHAIRMAN: You disclaim that?

MR SINCLAIR: Well, my lord, what I say is that it has a relationship on the rate as fixed.

THE CHAIRMAN: Has it?

MR SINCLAIR: Yes. It is one of the factors. I do not disclaim it as a factor. I say it is not the only basis that they fix on.

THE CHAIRMAN: I understand. There are classes of freight which by their very nature you cannot tax much freight on, but they must move notwithstanding. When you use the expression "ability to pay", I thought you meant the farmers, the shippers.

MR SINCLAIR: That the traffic can afford to pay just and reasonable rates; that is another way of putting it.

THE CHAIRMAN: That the traffic can afford -- yes, I see; that is right.

COMMISSIONER ANGUS: It is the excess over compensatory rates that you are considering particularly, is it not?

MR SINCLAIR: Quite so, quite so.

Now, there was just one other thing. Mr. MacPherson in his argument referred to what Mr. Spence said. I have only two more points I wish to answer, my lord. Mr. Spence had said the Board might have reduced rates to help the farmers in the 1930's if grain rates had been under their jurisdiction. Now, you will recall what Mr. Spence said; he said that the Board could have reduced them down from a just and reasonable level that they might have been at as prices fell off down to the point where they came to out-of-pocket costs and something more, a little bit more, but after that, then the Board could do nothing. That is what he meant, and I think it is wrong---



MR MACPHERSON: I was not querying about what they had reduced them. I was only intrigued with the view that Mr. Spence's construction of what was going to happen to help the farmer was at variance with Mr. Armstrong's construction.

MR SINCLAIR: All right. That is the second point.

We put these arguments forward on two bases -- one, that the farmer does not pay the freight; two, that even if he does -- and I was careful in a number of places to say that I was making that assumption almost certainly and correctly, and that is what Mr. Spence was doing when he was dealing with that point; he thought that I had established that clearly, I submit.

Now, my lord, when Mr. MacPherson was addressing you, you turned your attention to the distance that the Canadian grain was from the consuming market, and you mentioned Hungary.

THE CHAIRMAN: Well, I mentioned the countries that occurred to my mind as we went along. I know Hungarian wheat is one of the wheats that before the war used to be sold.

MR MACPHERSON: Hungary was an exporter before the war, before the Iron Curtain.

THE CHAIRMAN: Of course, I am not talking of today. I had in mind the market before the war.

MR SINCLAIR: Well, today in the export market we are competing with Australia, Uruguay, Argentine.

MR MACPHERSON: France.

THE CHAIRMAN: Australia.

MR SINCLAIR: Australia. And I think our evidence clearly proved that, no matter how far any farmer in Western Canada was from the consuming centre, he paid a lower transportation cost than any of the farmers in any of those areas.

(Page 19991 follows)





THE CHAIRMAN: You mean all the way over?

MR SINCLAIR: Yes.

MR MACPHERSON: All the way over?

MR SINCLAIR: All the way over -- from Australia to Hull, from Australia to Liverpool, from Uruguay to Southampton, from Uruguay to Brussels. If you add the cost of liner plus rail and take it all, you will find that you can ship Regina to Southampton, Regina to Hull, Regina to Liverpool, Regina to Brussels, cheaper than you can from those other places, and I would like to draw that to your attention. Therefore the buyer is taking advantage, in my humble submission, of any depressed level on the Canadian segment of the total transportation cost..

Now, there was one other part. In Mr. Shepard's address he referred to Mr. Spence, and he made some point out of this: He took up some of Mr. Spence's address in which Mr. Spence used the phrase "extraneous considerations". Now, I know it is difficult, with the speed at which we have been trying to travel, to get our notes quite accurately, but I have a complete note of what Mr. Spence did say, and I want to put it, not that Mr. Shepard in suggesting what he did had any invidious thought in mind at all, but I want to put it right here in the relation of what Mr. Shepard said about it. Mr. Shepard turned it out of its context entirely, because this is what Mr. Spence did say:

"The railway company is neither equipped nor qualified to see to the equitable distribution of subsidies, nor should it be made the instrument of the Government for that purpose. Mr. Sinclair has dealt with this phase of the matter, and I do not propose to repeat what he has said, but I do want to come back to my original theme, that what we are asking is just and reasonable rates on grain and flour, undiluted and



unqualified by any hidden subsidies, and established and regulated at that proper level without the complication of extraneous considerations."

That is what he had in mind -- hidden subsidies, without the complications of all those, without the complications of everything that they have in mind.

THE CHAIRMAN: I suppose one would have in mind circumstances which the Railway Act would not justify being taken into account. Would that be so? You see, after all, the Board must act within the scope of the Act, and I suppose extraneous would be beyond that.

MR SINCLAIR: What he is referring to there is using extraneous considerations, related to fixing a rate in relation to making it a subsidy.

THE CHAIRMAN: Well, the Board does not do that.

MR SINCLAIR: Mr. Spence said without the complication --<sup>the</sup> proper level without the complication of extraneous considerations. Mr. Shepard said that that meant that they could not take into account these matters that are so essential to the western farmer -- that is, that his grain would receive an equitable rate for transportation charges if he pays those charges.

That is all I have to say.

THE CHAIRMAN: All right, thank you.

Now, the Canadian National is not represented here this afternoon. Counsel told us why he had to leave, and told us at the same time that he had nothing at all to add to what their brief says. The Canadian National Railways deal with that subject at page 191 of their brief, under the heading of "Statutory Rates", and they say:

"The Canadian National is opposed to any extension of statutory rates. It does not consider that the Maritime Freight Rates Act should be extended in its



present application or that Acts based on the same principle should be made applicable to other parts of Canada. It considers that there is some merit to the suggestion that all rates should be placed under the jurisdiction of the Board of Transport Commissioners."

Now we shall adjourn. There are a few things I should say before we leave this room now. One is that we have fixed the day and the date for reconvening at Wednesday, April 19th, at the usual hour of 10:30 a.m. At that meeting we shall first deal with what is left of the Canadian National submission to be heard. Then we shall proceed to hear the evidence regarding the matter of co-operation between the two railways under the statute passed in 1933 or 1934. Then from that we shall proceed immediately and without any intermission to hear the final argument.

There is the question of amendments, the question of the desires for changes in the Act, being put into the form of amendments. We have had some; we have not yet had them all. In every case where amendments have been promised to us by counsel for various interests, and in any other case where counsel may hereafter think that they would like to propose amendments, we want to have all those amendments in hand on or before the 12th of April, and they should be exchanged, of course, between counsel.

MR MACPHERSON: My lord, is it Wednesday the 19th? I understood that we had two weeks and three days.

THE CHAIRMAN: Doesn't that give the two weeks and three days? We had a computation made, and these are the dates given to us.

MR MACPHERSON: We do not know how long this rehearing will last before the Board of Transport, and it was suggested that it is fixed for the 17th, but there is a possibility it may last two or three days.





THE CHAIRMAN: Well, Mr. MacPherson, today is Friday.

MR COVERT: Today is the 31st of March.

THE CHAIRMAN: It is Friday. Two weeks from today will be two Fridays from now. What date will that be?

MR COVERT: I was going to suggest, Mr. Chairman, if this is the 31st and we are coming back on the 19th, that is nineteen days later, and two weeks and three days would be seventeen days, so there are certainly two weeks and three days.

THE CHAIRMAN: I was going to calculate it the other way, but it comes to the same thing.

MR FRAWLEY: I realize that when the Court has spoken it is a little late to say anything, my lord, but I had thought that when we spoke of a week we spoke of a week from the week that we have been working, and that Saturday would not be held against us or included in the vacation time or the adjournment time.

MR COVERT: You are getting Saturday and Sunday both.

MR FRAWLEY: Well, we have sat only from Monday to Friday, and for sitting purposes the week finished on Friday night. I would have thought that the Commission would have given us until the 20th, and that would be two full weeks. When your lordship remembers that next week has a day in it that---

THE CHAIRMAN: Yes, I know. We knew all that before we ever had any discussion, that next week was Holy Week, and consequently a week of several holidays. We knew that before, and it was in view of everybody's knowledge of all that that we fixed these dates. We fixed the time two weeks, that week and the next week, forming part of the two weeks and three days.



What is it that you want to say now, Mr. Frawley?

MR FRAWLEY: I thought that we would have three days of the last week; on the week commencing Monday the 17th, 18th and 19th, as Mr. MacPherson says, we will be that week, your lordship understands, before the Board of Transport Commissioners, and it will not be any advantage to us in preparing our argument. Those three days we expect to be before the Transport Board. Of course, that is nothing new. That is why you gave us those extra three days. We have to be here on the 19th, and it is to be hoped that that will not last more than two days; if it does we shall be there on the third day.

(Page 19998 follows)



THE CHAIRMAN: I suppose that we could meet that situation when it occurs.

MR. FRAWLEY: That is true, but your lordship spoke of amendments, and I suppose there will have to be some discussion of those amendments, in fairness to the railways probably. Now, that could be delayed until the conclusion of the Canadian National case. It might take some little time, I don't know --Or before the Canadian National case. I am not making any point of it, but that must be remembered, that there will have to be a little time ---

THE CHAIRMAN: As soon as we start argument there will be something to be said about these amendments that you will have in hand by that time.

MR. FRAWLEY: At the time of the argument?

THE CHAIRMAN: Yes, I don't see any other time.

MR. FRAWLEY: All right, sir.

THE CHAIRMAN: But we want to have them in hand by 12th of April.

MR. FRAWLEY: Oh, yes.

MR. SHEPARD: Mr. Chairman, the amendments Manitoba was suggesting have been in the hands of counsel for some time. I wondered if it would be proper to have them included at this point in the record. I could give a copy of them to the reporter. They are not very lengthy and it may be useful.

THE CHAIRMAN: Yes, you can just hand them to the reporter.





MEMORANDUM OF AMENDMENTS TO THE RAILWAY ACT,  
CAP. 170, R.S.C. 1927

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(Suggested by Manitoba)

Section 33.

Amend Section 33 by adding thereto the following sub-sections:

- (6) Notwithstanding the provisions of Sub-section (2) of Section 9 of this Act the Board is an administrative tribunal and its orders, decisions, rules and regulations shall be construed accordingly. The Board shall not be bound in any way by its previous decisions, procedure or practice.
- (7) Upon any hearing the Board may hear any evidence which in its opinion is relevant to the matter and shall not be bound by the legal or technical rules of evidence nor shall it be restricted to making a decision based only upon the evidence taken at the hearing.

Section 36.

Amend Section 36 by adding thereto the following Sub-section:

- (2) It shall be the duty of the Board to act on its own motion in respect to matters under its jurisdiction when in the opinion of the Board such action is in the public interest and particularly in respect to the matter of just and reasonable rates.

Section 38.

Amend Section 38 by adding thereto the following Sub-sections:

- (2) The Governor in Council may also give general directions to the Board in respect to the

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policy to be followed by the Board in the exercise of its jurisdiction under this Act.

Section 52.

Repeal Sub-section (1) of Section 52 and substitute therefor the following:

- (1) The Governor in Council may at any time, in his discretion, either upon petition of any party, person or company interested, or of his own motion, and without any petition or application, review, rescind, change, alter or vary any order, decision, rule or regulation of the Board, whether such order or decision is made inter partes or otherwise, and whether such regulation is general or limited in its scope and application, and remit any matter to the Board with directions respecting the disposition thereof; and any order which the Governor in Council may make with respect thereto shall be binding upon the Board and upon all parties.

Section 325A.

Amend the Railway Act by adding thereto the following Section:

- 325A(1) Notwithstanding the requirements of this Act with respect to filing tariffs of tolls the Board shall, without the necessity of prior filing of tariffs, have full jurisdiction to inquire into, hear and determine an application by or on behalf of any party interested for an increase or decrease of tolls by reason of changing conditions or costs of transportation.



- (2) Any order made under this Section may authorize the filing of tariffs as required by this Act giving effect to the increase or decrease ordered.
- (3) The Board in determining any application under this section shall have due regard to -
  - (a) The establishment and the maintenance of equality of tolls between various localities in Canada;
  - (b) All charges and expenses of the company, including maintenance charges;
  - (c) Whether or not the railway is operated efficiently and with due regard to any savings which have been, or should have been, effected including savings under the C.N.-C.P. Act;
  - (d) The cost of operating any particular service and without restricting the generality of this paragraph the cost of passenger service;
  - (e) The level of rates set to meet competition and whether or not such rates are compensatory.
- (4) In determining an application under this section it shall be the duty of the Board to make independent studies and investigations in respect to the financial and other affairs of the company for the purpose of safeguarding the interests of the public generally or any portion thereof.

Section 325B.

Amend the Railway Act by adding thereto the following Section:





- 325B(1) Notwithstanding anything contained in this Act it shall be the duty of the Board to maintain a constant supervision over tariffs of tolls with a view to insuring that all rates are compensatory.
- (2) The Board may require the railways or any one or more of them to establish and maintain such revenue and expense accounts as it may prescribe for the purpose of determining whether or not the rates or any one or more of them are compensatory.
- (3) The Board shall disallow as unjust and unreasonable any rate which is not compensatory.
- (4) No rate shall be considered compensatory which does not return to the railway the out-of-pocket costs together with some reasonable amount in excess thereof.

Section 325C.

Amend the Railway Act by adding thereto the following section:

- 325C-(1) In the case of a company with assets other than those used or useful in operating its railway including inland and connecting coastal steamship lines, it shall be the duty of the Board, for rate making purposes, to require the segregation of those assets and income therefrom from the other assets and income of the company.
- (2) The Board shall have full jurisdiction to determine the proper segregation.

Section 328.

Repeal Section 328 of the Act and substitute therefor the following:



- 328 The tariffs of tolls which the company shall be authorized to issue under this Act for the carriage of goods between points on the railway shall be divided into two classes -
- (a) the standard freight tariff; and
  - (b) special freight tariffs.

Section 329.

Repeal Subsection (4) of Section 329.

Section 332.

Repeal Section 332 of the Act.

Section 438A.

Amend the Railway Act by adding thereto the following section:

- 438A(1) The Board shall, as soon as is practicable after the coming into force of this section, Prescribe:
- (a) A uniform system of accounts applicable to all railway companies or such railways as it deems proper and shall fix a period of time within which the companies shall put into effect such uniform system of accounts, and the manner in which such accounts shall be kept;
  - (b) For all railway companies the classes of property for which depreciation charges may properly be included under operating expenses, and the rate or rates of depreciation which shall be charged with respect to each of such classes of property.
- (2) Nothing in this section shall require any railway company for corporate purposes to keep its accounts on the prescribed uniform system or charge prescribed depreciation rates.



- (3) The Board or any duly authorized officer or agent shall at all times have authority to inspect and take copies of all accounts, books, records, memoranda or other documents of any railway company.

Agreed Charges

Repeal Part V of the Transport Act, 1938 C.53  
S.C. 1938.

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Mr.Frawley, having spoken with the Commissioners, submitted the following amendments to the Railway Act, as proposed by the Province of Alberta:

	Province of Alberta
	<u>Index Page No.</u>
Section 314 revised (Personal Discrimination)	1
Section 314A new section (Long and Short Haul Rule)	2
Section 321A new section (Industrial Location)	4
Section 329 revised (Standard Tariffs)	5
Section 329A new section (Special Tariffs)	6
Section 329B new section (Competitive Tariffs)	7
Section 332 revised (Competitive Tariffs)	8
Section 338 revised (International Rates)	9

J.J. FRAWLEY



(Prov. of Alberta p. 1)

314 REVISED

Personal (1) All tolls shall always in respect of all traffic  
discrimi-  
nation of the same description, and carried in or upon the  
prohibit-  
ed

like kind of cars or conveyances, passing over the  
same line or route from the same origin to the same  
destination, be charged equally to all persons and  
at the same rate, whether by weight, mileage or  
otherwise.

(2) No reduction or advance in any such tolls shall  
be made either directly or indirectly, in favour of  
or against any particular person or company travel-  
ling upon or using the railway.

(3) The tolls for carload quantities or longer dis-  
tances, may be proportionately less than the tolls for  
less than carload quantities, or shorter distances,  
if such tolls are, under substantially similar  
circumstances, charged equally to all persons.

(4) No toll shall be charged which unjustly dis-  
criminate between different localities.

Note: Section 314 ss. (1) revised: ss. (2), (3)  
and (4) unchanged; ss. (5) and ss. (6)  
included in new Section 314A.



(Prov. of Alberta P. 2)

SECTION 314A

Long and (1) The Board shall not approve or allow any toll,  
Short Haul  
Clause

which for the like description of goods, or for  
passengers carried in the same direction over the  
same line or route, is greater for a shorter than  
for a longer distance, within which such shorter  
distance is included, unless the company upon  
application has established to the satisfaction of  
the Board that:

- (1) There is actual and compelling competition  
at the competitive point which is beyond  
the control of the applicant company and  
such competition is absent at the inter-  
mediate point.
- (ii) The toll at the competitive point is not  
lower than necessary to meet the competition.
- (iii) The toll at the competitive point is such  
as to warrant a reasonable expectation  
that as a result of charging the competitive  
toll, net earnings will be greater than  
they would be in the absence of such  
toll.





(Prov. of Alberta p. 3)

(2) Any toll which for the like description of goods or for passengers carried in the same direction over the same line or route is greater for a shorter than for a longer distance within which such shorter distance is included shall at all times be just and reasonable when compared to the toll for the longer distance.

(3) No toll, which has been approved or allowed under the provisions of subsection (1) of this section, between two points for the purpose of meeting competition applying to or from a third point, shall unduly prejudice other origins or destinations.

(4) With respect to tolls of the kind referred to in subsection (1) existing at the date of the coming into force of this section, the company shall, within ninety days of such date make application to the Board for approval of such tolls as required by the provisions of subsection (1), and until the determination of such application such tolls shall be deemed to have been approved.

Note: New Section replacing present 314 (5) and (6).



(Prov. of Alberta p. 4)

SECTION 321A

Relation-  
ship between  
tolls on  
raw  
materials  
and  
finished  
products

The Board shall, upon application by an interested party or parties prescribe or direct the company to establish tolls on raw materials and tolls on products made in whole or in part from such raw materials, in such manner that the relationship between the tolls on raw materials and the tolls on products made therefrom shall not per se discourage the processing, manufacture or other conversion of such raw materials at or near the point of production of such raw materials: Provided that the onus shall be upon the applicant to satisfy the Board that the existing relationship between the tolls discourages per se the processing, manufacture or other conversion of such raw materials at or near the point of production of such raw materials; and provided further that any such relationship between the tolls shall not result in an unreasonable difference between the tolls so prescribed or established on the raw materials and the tolls on similar raw materials or between the tolls so prescribed or established on the products and the tolls on similar products.

Note: New Section.



(Prov. of Alberta p. 5)

329 REVISED

(1) The standard freight tariff shall specify the maximum mileage tolls to be charged for each class of the freight classification for all distances covered by the company's railway and such tolls shall be the same for the same distances and the same tolls shall be charged by all companies.

(2) Such distances may be expressed in blocks or groups and such blocks or groups may include relatively greater distances for the longer than for the shorter hauls.

Note: Section 329 (1) revised; ss. (2) unchanged;  
ss. (3) appears in new Section 329A; ss.  
(4) appears in new Section 329B.





(Prov. of Alberta Index page #6)

SECTION 329A

What special freight tariffs or tolls, lower than in the standard freight tariff, to specify be charged by the company for any particular commodity or commodities, or for each or any class or classes of the freight classification, or to or from a certain point or points on the railway.

Equali- (2) The tolls for the same description of traffic charged zation of special freight tolls in the special freight tariffs shall be just and reasonable and shall be the same for the same distances, and such distances may be expressed in blocks or groups and such blocks or groups may include relatively greater distances for the longer than for the shorter hauls: Provided that distinctions in such descriptions of traffic shall be based on the nature and use of the commodity or commodities and shall not be based upon local or regional differences in operating conditions nor upon competitive conditions.

Tolls made to develop traffic (3) Notwithstanding the provisions of subsection (2), the company may, for the purpose of assisting an industry or of developing traffic which otherwise might not exist, establish tolls lower than the tolls



(Prov.of Alberta index page \$6a)

for traffic of the same description: Provided that such lower tolls shall not remain in effect for a period of more than three years without the approval of the Board, and the company shall have the right to cancel or amend such lower tolls at any time within such period.

Note: ss. (1) is a revision of Section 329(3) of the present Act; ss. (2) and (3) are new.



(Prov. of Alberta index page #7)

SECTION 329B

What the  
com-  
petitive  
tariffs  
to  
specify

The competitive tariffs shall specify the  
toll or tolls lower than in the standard or special  
freight tariffs to be charged by the company for  
any class or classes of the freight classification  
or for any commodity or commodities, to or from  
any specified point or points at which there is  
actual and compelling competition.

Note: Section 329B is a revision of present

Section 329 (4).





(Prov. of Alberta index page \$8)

SECTION 332 REVISED

- (1) Competitive tariffs shall be filed by the company with the Board and every such tariff shall specify the date of the issue thereof and the date on which it is intended to take effect: Provided that where it may be necessary to meet the exigencies of competition, or as the Board may deem expedient, the Board may make rules and regulations governing the filing or publication of such tariffs, and may provide that any such tariffs may be acted upon and put in operation immediately upon the issue thereof<sup>by</sup>/the company, before they have been filed with the Board, or may in any case make a special order or direction allowing any such tariff to go into effect as the Board shall appoint.
- (2) It shall be the duty of the Board to maintain such continuous examination of the competitive tolls are now lower than necessary to meet actual and compelling competition and that such tolls than cover the additional costs of the movement to which they apply.

Note: ss. (1) unchanged; ss. (2) is new.



(Prov. of Alberta index page #9)

SECTION 338

(2) When a combination of local tolls on traffic moving from a point in Canada through a foreign country into Canada makes a lower charge than the toll or tolls charged for the same description of traffic moving between the same two points in Canada over a line or route lying wholly within Canada, such lower combination of tolls shall apply over the lines or routes upon which it is based: Provided that where prohibition of the charging of such combination of tolls between points in Canada is made in tariffs not subject to the jurisdiction of the Board, the said lower combination of tolls shall be applicable between the same two points over continuous routes lying wholly within Canada.

Note: New subsection.

(Page 20017 follows)

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THE CHAIRMAN: There is this too. When we come to final argument we would like to have counsel lay before us the points which at that time will appear to them to be the real points in which they are interested. That is, as we have gone along there have been these stray arguments, inevitably, and I think on the whole, profitably. I am not finding any fault with them. Certain matters may appear to some counsel, at least, perhaps to us all, to have rather fallen by the wayside as we have proceeded, and not to appear so important now as they appeared at the outset. I am just saying I would expect, when we do meet, that counsel will take pains to express before us the points on which they really rely; not to take it for granted that we have heard already so much and we will have it all in our minds anyhow.

Finally, as to the counsel that are to appear and who wish to argue and the time to be allotted in the order of the arguments and so on. I think the best thing to do is to leave that to be dealt with by the various counsel, with counsel for the Commission. You remember that Mr. Covert wrote a letter on December 16 last (which can be taken now and read again) and at that time he outlined an order for everybody. I won't read the letter now, but you all have it; and <sup>if</sup> if anything arises out of that letter, anybody has any representations to make, then the proper thing to do will be to address yourselves to our counsel.

Well, that is all we have to say today. We are very thankful to those who have devoted so





much time and study to our enlightenment, and we will meet again, according to programme, on Wednesday, April 19th.

---At 6:20 p.m. the Commission adjourned until Wednesday, April 19th, 1950, at the hour of 10:30 o'clock in the forenoon.













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